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Tenants Law:

A TREATISE of great Use, &c.

FOR

TENANTS and FARMERS

Of all Kinds,

And all other Persons whatsoever.

WHEREIN

The several natures, differences and kinds of Tenures and Tenants are discussed, and several Cases in the Law touching Leases, Rents, Distresses, Replevins, and other accidents between Landlord and Tenant, and Tenant and Tenant between themselves and others; Especially such who have suffered by the Late Conflagration in the City of *London*.

Flammâ Consumpta, Resurgo.

The Fourth Edition.

By *R. T.* Gent.

LONDON.

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To the Tenants of *England.*

I have often obſerved many inconveniences and Damages to happen to Tenants oftentimes by their Ignorance and Timeroſity, not knowing how to defend themſelves againſt inſulting and cruel Landlords; *and oftentimes they commit many delinquencies to the* Landlord, *and Treſpaſſes and* Nuſances *againſt one another unwittingly, not knowing when they offend; and moſt often they plung themſelves into*

the Mire; *and are inſnared in the Net of trouble, like a bird, by their over-much ſtriving to get themſelves free and at liberty from it, and intangle themſelves more and more, and work themſelves the farther and faſter in, till they beat themſelves out of breath, and break their Wings, and loſe ſo many Feathers, that they ſcarce ever get fluſh again. One cauſe hereof is; many delight to delude and flatter themſelves, by ſetting a fairer gloſs upon their cauſe than it will bear when it comes to the* Teſt, *and to give wrong inſtructions to their* Clerk *or* Attorney, *whereby*

it cannot be rightly Stated to learned Council, *and then what the Event of this will be, I leave to your ſelves to Judge.*

I have taken the pains to compoſe this Treatiſe, to teach you to undeceive your ſelves, and not to ſeek refuge from the Law in ſuch caſes when you your ſelves have done the injury: and likewiſe to ſhew you how you may ward your blows and defend your ſelves againſt ſuch as are injurious unto you, Malicious *and* Superbous.

I have methodized the particular Directions enacted for ending Controverſies, be-

tween all Persons concerned in the late dreadful Fire of the City of London ; *whereby they may with more ease, compose their own differences, and inform themselves of the Rules for new Building. I wish you much profit ; which is all the design herein intended, by a Lover of his Country.*

R. T. Gent.

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Tenants Law.

CHAP. I.

A Diviſion of the Several kinds of Tenants and Tenures.

The kinds of Tenants and Tenures.

EVery Subject of this Kingdom that occupieth any Lands, or inhabiteth in any Houſe or Tenement, is ſaid to be a Tenant, *Tenens a Tenendo*; becauſe he muſt hold of ſome Lord or other.

And divers and various are the natures and kinds of Tenants and Tenures in this Land at this time; Although

though they have been more numerous, and indeed excessive slavery to the people, so that their exorbitant Cruelty hath caused their Dissolution.

Villenage. Those which are ceased to be, are Tenure in *Villenage*, where the Lord might vassal and enslave his Tenants person at his pleasure, but not kill him.

Pillenage. *Pillenage*, where the Lord might pillage his Tenant of all his goods.

Free Alms. Frank-Almoigne, or free Alms, was a Tenure begun and had its original, either at or soon after the foundation of *Monasteries* and Religious Houses, and extripated with them. The nature of it in old time was, when a man being Seised of Lands or Tenements in his *Demeasne* as of Fee, of the same Land did enfeoff some Abbot or Prior and their Covents, or some Dean and Chapter and their Successors, or some Parson of a Church and his Successors, or any other Religious person who was in a Capacity to take such Alms, to hold the same Lands and Tenements to them and their Successors in *Liberam Eleemosyman*, in Free-

Free-Alms, or *Frank-Almoigne*, of the grantor and his Heirs: And ſuch as held in Free-Alms were bound in conſideration of ſuch grant or Feoffment, to perform certain Divine and Religious Services and Exerciſes, for the Souls good, Life and Proſperity of the grantors and all others.

And they confirmed all their grants with grievous *Anathema's* and Imprecations againſt all ſuch as ſhould in any ways diminiſh or take away ſuch their grant, or convert the ſame unto any other uſe; (which ſome juſtly believe to be none of the leaſt Cauſes why Purchaſers of Church-Lands find ſuch ill ſucceſs, and ſeldom to enjoy it to the fourth Generation.)

But, as I ſaid before, this Tenure and the Religious Houſes ended together, or immediately one after the other; So that none can grant any Lands or Tenements in *Liberam Eleemoſynam* at this day.

Tenure in Capite and Knights-Service is alſo by Act of Parliament in the twelfth Year of his now Majeſties Reign, (together with the Court of Wards *Knights-Service.*

Wards which was dependant upon that Service) taken away, and all those Tenures are now turned into common *Soccage.*

So that the more usual Tenants amongst us at this day, are,

Fee-Simple. Tenant in Fee-Simple, in Fee-Tail.

Fee-Tail. Tenant in Tail, after possibility of issue extinct.

Dower, Courtesie, Term of life, for years. Tenant in Dower, by the courtesie of *England*; Tenant for Term of Life, for years upon Lease, in writing, or Lease parol.

At will. Tenant at will; by the Common Law, or by custom.

Copy. Tenant by Copy of Court-Roll.

Coparcenary. Tenants in Coparcenary, Joynt-Tenants, and Tenants in common.

Fee-Simple.

Fee-Simple. A man that is seised in Lands or Tenements, to hold to him and his Heirs for ever, is said to be Tenant in Fee-Simple, and such an Estate is called *Feodum Simplex.* The word *Feodum* in Latine being taken to signifie Inheritance; and *Simplex* implies pure, plain or unmixt: And in-

indeed Fee-Simple is the moſt pure holding that is, being unmixt or entangled in it ſelf. But as the whiteſt Colour will be ſooneſt ſtained; ſo is this pure Tenure moſt ſubject to be ſpotted and involved in troubles above any other; Which the Law calls *Incombrances.*

Incombrances of Fee-Simple.

If a man were to deal as purchaſer with a Tenant in Fee-ſimple, he hath a happy bargain if he meets with a Simple Tenure and a Simple Tenant; I mean, the one free from Incombrances, and the other from deceit; which many have found it a difficult thing to obtain.

I ſhall therefore by way of caution ſet down the Several troubles and incombrances this pure and Simple Tenure, called Fee-Simple, is ſubject unto.

Fee-Simple may be incombred, with ſeveral Judgments, Statutes Merchant and of the Staple, Recognizances, Mortgages, Wills, Precontracts, Bargains and Sales, Feoffments, Fines, Amerciaments, Joyntures, Dowers, and many other fraudulent Conveyances, if a knave once poſſeſs it; and laſt of all,

all, may be quite forfeited for Treason.

But Fee-simple being free from any of the aforementioned incombrances, is the most free; absolute, and ample Estate of Inheritance that any man can have; And therefore a Tenant in Fee-Simple, is said to be *Seisitus in Dominico suo, ut de feodo*; that is, seised in his Demeasne as of Fee.

Tenant in Fee-Tail.

Fee-Tail. All Freehold Inheritances before the Statute of *Westminster* 2 Cap. 1. were Fee-simple at the common Law; so that Tenant in tayl was instituted by force of that Statute; By which Statute there is a twofold Tenant in Tayl, *viz.*

General, and special Tayl.

General Tail. He is said to be Tenant in general Tayl, who holdeth Lands or Tenements to him and to the Heirs of his body begotten.

For if in this case he Marry many Wives, and have issue by them all; every

every one of them may (the Elder dying) come to inherit this Land, because every one is the issue ingendred of his body.

It is the same case if Lands or Tenements be invested upon a Woman and the Heirs of her body, and she have several Husbands, and Children by them all, every one of them is in a possibility to inherit those Tenements, being all begotten of her body.

But where Lands or Tenements are settled upon a man and his Wife, and the Heirs of their bodies between them two lawfully to be begotten; This is Tenant in Special Tayl, because in this case none can inherit, but such Children as are by this man begotten upon the body of this wife named in the Grant: And if that wife dye, and the man taketh another wife, and hath issue of her body, the issue by the latter wife cannot inherit by vertue of such a grant; And if the first Husband dye, and the wife marry again and have issue by a second Husband, that issue cannot inherit. *Special Tail.*

There be several other Estates in

Special tail with limitation.

in Special Tail, according to the Devises, Limitations, and Conditions invented and settled by the *Donor*; as sometimes to a man and his Wife and the Heirs Males of their bodies between them two to be begotten; in this Case the Females cannot inherit.

So that if Lands be invested upon a man and his Heirs Males of his body, and he hath issue two Sons and dyeth, the eldest enters, according to the grant, and hath issue a Daughter and dyeth; this Daughter shall not inherit the Land, but the Brother, because he is the Heir Male.

And if a man hath Lands granted to him, and to his Heirs Males of his body; and he hath no Son, but only a Daughter; and the Daughter hath a Son and dyeth, living her Father, and after that the *Donee* dyeth; in this case the *Donee* dying without issue Male in the Law, the Son of his Daughter, which is his Grandchild, shall not inherit, but the entail is extinct, and the Land shall Revert to the *Donor*.

Tail Tenures Incombrances.

These grants in Tail are the cause of much strife, and stir up many charge-

chargeable ſuits, though in my judgment they are uſeleſs: for the intent of the *Donor* is ſeldom obſerved in them, he intending to preſerve the Memory of his own name to perpetuity; which cannot be, ſince a Fine and Recovery will *deck* it.

Tenant in Tail after poſſibility of Iſſue extinct.

Poſſibility of Iſſue extinct.

When Lands and Tenements be granted to a Man and his Wife in ſpecial Tail, and one of them dye before they have iſſue, the *Survivor* is Tenant in Tail after poſſibility of iſſue extinct; but if they have iſſue, during the life of the iſſue the *Survivor* cannot be ſaid to be tenant in Tail after poſſibility of iſſue extinct. But if the iſſue dye without iſſue, and leave none to inherit by vertue of the entail, then the Surviving *Donee* is tenant in Tail after poſſibility of iſſue extinct.

Donee in ſpecial Tail.

And none can be tenant in Tail after poſſibility of iſſue extinct, but one of the *Donees* in ſpecial Tail; which tenant in Tail after poſſibility of iſſue extinct is not chargeable for com-

committing of Waſte, becauſe the inheritance was once in him; but if he doth Alien in Fee, it is a forfeiture of his Eſtate, and the Heir in Reverſion may enter.

Tenant by the Courteſie of England.

When a Man marries a Wife ſeiſed in Fee-ſimple, or in general Fee-Tail, or one that is Heireſs unto Lands or Tenements in Special, and hath a Child by the ſame Wife male or Female born alive, and the Wife dye; whether the Child be living or dead, the Husband ſhall hold the ſame Lands during his Life, as Tenant by the Courteſie of *England*, which is a Tenure uſed in none other Country but in *England*: And although the Child dye aſſoon as it is born, if it were but heard cry, the Husband ſhall hold the Lands after his Wifes deceaſe during his Life as Tenant by the courteſie, the crying of the Child being a ſufficient Teſtimony of its being born alive.

Tenant by the courteſie.

Tenant

Tenant in Dower.

This kind of Tenant is always of the Feminine gender; and is when a man who is seized of Lands or Tenements in Fee-simple, or in general Tail, or as Heir in Special Tail, marries a Wife and dies; the Wife after the death of her Husband, shall have during her life the third part of such Lands or Tenements as her Husband had during the Coverture, whether she had any issue by him or not, so she be above nine years of age at her Husbands death. *Tenant in Dower.*

This is the Dower at the Common-Law; but by custome in many places it is otherwise: For in some places she shall have the half, and in others the whole; and in all these cases she is Tenant in Dower. *Dower at Common-Law.*

In *Kent* it is the custom, for the Woman to have half her Husbands Lands *durante viduitate*, so long as she continues a Widow; but if she marry again she loses all: So likewise is the custom there, if a man marry a Wife having an Estate in Lands, *&c.* and she dye without issue, *Dower by the Custom.*

ſue, he ſhall have half while he remains ſole: But if he marry again he loſeth all. And in *Kent* they ſay, the reaſon thereof is, becauſe they do not love that their Lands ſhould help to maintain any Children but ſuch as are of their own getting; but how ſure they are hereof, *Ignoramus*.

Tenant for Life.

He that holdeth Lands or Tenements for the term of his own Life, or for term of the *Life* of any other perſon; In this caſe the *Leſſee* either for term of his own life, or for anothers, is Tenant for term of *Life*; And this Tenant for *Life* hath in him the Freehold, this being the loweſt degree of Freehold.

Leſſor and Leſſee. In a grant for term of life, it is ſaid to be from *Leſſor* to *Leſſee*. Note, there is *Feoffor* and *Feoffee*, *Donor* and *Donee*, *Leſſor* and *Leſſee*: ſo there is likewiſe *Grantor* and *Grantee*, *Obligor* and *Obligee*, *Mortgagor* and *Mortgagee*.

Feoffor and Feoffee. He that enfeoffeth another in Lands or Tenements, is called the *Feoffor*

Feoffor; he to whom the feoffment is made, is the *Feoffee*.

So when a man giveth Lands or Tenements to another in tail, he is called the *Donor*; and he to whom the gift is made is the *Donee*. *Donor and Donee.*

And likewise he that letteth to another any Lands or Tenements to hold for term of Life, for Years, or at Will, is called the *Lessor*; and he to whom the *Leases* is made, is called *Lessee*: which *Lessee* for *Life* (as I said before) is tenant of Freehold. *Grantor and Grantee.*

So also he that pawneth Lands to another is called *Mortgagor*, and he to whom it is pawned is called the *Mortgagee*. *Mortgagor and Mortgagee.*

Tenant for Years.

Tenant for term of Years, is when a man demiseth, and letteth any lands or tenements to another to hold for a certain number of years agreed upon between the *Lessor* and the *Lessee*; by force and vertue of which Lease, the *Lessee* entreth into the said tenements. *Tenant for years.*

This Lease for term of years may be granted by word of mouth, and this

this is called a *Lease* parol: which shall bind the *Lessor* so long as the term is accorded for; if the Witnesses live to prove the *Lease* Parol.

But the more safe and usual way, is to take a *Lease* by Deed indented, which needs no other Execution but only sealing and delivery. For by vertue of that *Lease*, the tenant may enter whensoever he will.

Livery and Seisin in Lease for Life.

But a *Lease* for term of *Life* must be executed by *Livery* (and *Seisin*; because the freehold passeth with that *Lease*; which it cannot do without *Livery* and *Seisin*.

This was the Case of *Allen* and *Waller* at the *Lent*-Assizes at *Maidstone* 1654. *Waller* brought an *Ejectione firme* against *Allen*; the Defendant proved a Lease Parol at a certain Rent during his Life: Which last word of the Defendants witness gave the verdict against him, because none can be tenant for Life, without *Livery* and *Seisin*.

Also if a man make a Lease to one for Years, the Remainder to another for Life, or in tail, or in Fee, here the Lessor ought to make *Livery*

ry and *Seisin* to the Lessee for Years; or else nothing shall pass to him in remainder, though the Lessee enter and enjoy his term of Years; but the Free-hold and the Reversion remains in the Lessor. But if the Lessor make *Livery* and *Seisin* to the Lessee, then the Free-hold passes over to them in the Reversion, according to the grant.

Lease for Years takes right after the delivery.

Likewise if a man make a Lease of Lands or Tenements to another for term of Years, and the Lessor dye before the Lessee enter into the tenements; nevertheless he may enter, notwithstanding the death of the Lessor, because the Lessee hath right to the tenements by vertue of his Lease, immediately after the sealing and delivery of it.

Tenant at Will.

Tenant at Will.

When a man demises Lands to another to hold to the Lessee at the will of the Lessor, and by vertue of this Lease the Lessee is in possession; here the Lessee is tenant at Will, and hath no certain Estate in the tenements he holdeth, but the Lessor may eject him when he pleases.

He that sows shall Reap if Tenant at Will.

But if the Lessee sow the Land, and the Lessor eject him out afterwards before the Corn be ripe, the Lessee shall nevertheless have his Crop, and shall have free Egress and Regress to cut and carry it away, because he knew not when the Lessor would enter upon him.

But if a tenant for years sow his Land so near the end of his term, that his Lease expire before the Corn be ripe, he shall not come to reap it; but the Lessor or other who hath the Reversion shall have the Crop, because the Lessee knew certainly the end and determination of his term and Lease.

Not so in Tenants for years.

In like manner if a house be let to a man to hold at Will, and the Lessee enters the House, and bringeth in thither his Goods, and Household-stuff, and afterwards the Lessor ejects him out; here he shall have liberty of Egress and Regress, to fetch away his Household-stuff.

Also if one seised in Fee-Simple, Fee-tail, or for term of Life, in an House, and hath Goods in that House, and makes his Will, appointing his Executors, and dies; now to who-

whosoever the house descends, the Executors shall have liberty in some reasonable time to enter and carry away the goods.

And if a man by Deed of Feoffment grants certain Lands to another, and delivers him the Deed, but executes it not by *Livery* and *Sesin*; the *Feoffee* in this case may enter that Land and hold it at the will of the *Feoffor*, but the *Feoffor* may eject him out again when he will.

Tenant at Will not bound to repairs.

If a man dwell in a House as tenant at will, he is not bound to repair the said house, as a tenant for term of years is bound to do.

But if a tenant at will shall commit voluntary waste, as to pull down Houses, and Cut, Grub, Fell, or destroy Trees, the Lessor may bring his Action of trespass against him for so doing: and the Lessor upon a Lease at Will, if he hath reserved a yearly rent, may either distreyn, or bring an Action of debt for the same, if it be in Arrear, which he pleases.

Tenant by Copy of Court-Roll.

Tenant by Copy of Court-Roll.

This is a very ancient tenure, and depends only upon cuſtom; and there are ſo many and various kinds of cuſtoms in Copy-holds in ſeveral Mannors and Countries, that it would take up a large Volume to diſcourſe of them all; which is not now our preſent Intention; but we ſhall refer that Subject to a further opportunity, and here ſhortly in general terms ſet forth the nature of a tenant by Copy of Court-Roll. In a Mannor wherein there is a Cuſtom, and hath been ſo uſed time out of mind (for nothing can be a Cuſtom, unleſs it be *Tempore quo non exiat Memoria*, time out of mind,) that certain tenants within the ſaid Mannor, have uſed to have Lands or Tenements, to hold to them and their Heirs in Fee-ſimple or Fee-tail, or for term of life, or upon any other condition, at the Will of the Lord after the cuſtom of the ſame Mannor; ſuch tenants are called *Copy holders*; that is, tenants by Copy of Court-Roll: for a

Copy

Copy of the Court-Roll is all the evidence they have for their estates in the said Lands.

Copy holder cannot Alien by Deed.

Now a tenant by Copy of Court-Roll, may not alien his estate by Deed; for if he do, it is a forfeiture to the Lord, and the Lord may enter, and take the forfeit.

But if any tenant by Copy of Court-Roll, will alien his Lands, he may do it by a surrender into the hands of the Lord, to the use of him that shall have it; and any kind of Estate that a Free-holder can make of his Land by Deed, a *Copy-holder* may do the same by surrender.

The tenant by Copy of Court-Roll is also bound by the custom to repair his houses; and if he suffer any tenement or house to fall down for want of repair, or if he pull it down, he forfeits his Copy-hold to the Lord of the Manor.

There are seven Properties incident for the Maintenance of a good Custom.

2 Ed. 4. 24. 13 Ed. 3. 4. 42 Ed. 3. 4. 5 H. 7. 9. 42 Ed 3. 3 H. 6. 13. 31 Ed. 3. *Prescript.* 122.

First, it must be reasonable.

Secondly, It must be certain.

Thirdly it must be according to Common Right.

Fourthly, it must be on good consideration.

Fifthly, it must be Compulsory.

Sixthly, It must be without prejudice to the King.

Seventhly, it must be to his profit that claimeth the same.

In Customs there is User, Non user, Abuser, *and* Interuser.

User, is when according to time and occasion a Custom is used.

Non user, is when, for want of time and occasion, or through negligence, or forgetfulnes, a custom is not used.

Abuser, is when Custom is ill used; for as User doth nouriſh Custom, so doth Abuser destroy a Custom.

Inter-

Interuser is in some cases, where a Custom may be used in one sort, and sometimes in another, and yet a good Custom, if there be good Considerations for the exchanging thereof at times.

Fine at the Lords Will.

If the Lord have used at the Admission of his Copy-hold tenants sometimes to take for a Fine two pence, or sometimes four pence for an Acre, sometimes twelve pence an Acre; this User is so uncertain, that it makes the Fine Arbitrable at the Lords will.

Admission without Fine.

If the Lord of a Mannor have used time out of mind to admit his Copy-hold tenants without Fine, this Usage shall bind the Lord as well, as a Fine certain.

Work of Tenants.

If the Lord have used to have certain Work-days of his tenants; And that hath not been used by the space of Twenty years last past: yet that Non User is no discharge to the tenants, so that there be any alive that can remember the same.

Interuser for Rent.

If the tenants have use when they Sow their Lands to pay the Lord Rent-Corn, and when it lyeth in Pasture to pay their Rents in money, this is a good *Interuser*.

Idem. If the tenants have used to pay their Lord every fourth year a double Rent, and every fifth year an half Rent; this is a good Interuse.

Abuser by Cattel. If the tenants have used to have Common of Pasture in their Lords Woods for their Horse-cattel, and they put in their Neat-cattel and destroy the Woods, this is an abuser; But it is but fineable and no forfeiture of the Common, no more than if they have Common for a certain number of Beasts in the Lords Soyl, and they exceed the number; this abuse by the Surcharging, is only fineable and no forfeiture.

Forfeiture. If a man have a Fair to be used two days, and he keeps it three days, this abuse is a forfeiture.

Customs must be reasonable. Every good Custom is grounded upon good Reason, and that shall be said in reason a good Custom, that in reason is a good Law; for Law and Custom be of that affinity, as both do allow like Reason, and both do forbid like Inconveniences; And the final effect of both is to discuss and to discern every mans true right, and to give to every man that which is

is his own; for although Custom in some cases differ from Law, and doth admit Execution of some Acts without some Ceremonies required by the Law, yet the end and effect of Custom is to maintain the like reason, and avoid the like inconveniences as the Law doth.

If the tenants of a Mannor will prescribe to hold without paying any Rents, or Services for their Copyholds, this is no good Custom. But to prescribe to hold by Fealty for all manner of Services is good and reasonable.

If a Lord will prescribe never to hold a Court but when it pleaseth himself, this is not good; But to prescribe never to hold a Court for the special good of any one tenant, except the same tenant will pay him a Fine for the same; that is good and reasonable.

If a Copy-holder surrender his Land to the use of a Stranger, in consideration that the same Stranger shall Marry his Daughter before such a day; if the Marriage succeeds not, the Stranger takes no benefit by the surrender. But if the surrender

be in consideration that the Stranger shall pay *such a Sum* of money at such a day; though the money be not paid, yet the surrender standeth good. Many Customs there are, which at the beginning were voluntary; and now by continuance are grown Compulsary: *Quæ initio fuerunt voluntatis ex post facto fuerunt necessitatis*; Saith the Civil Law; which also in many Cases doth agree with the Common Law.

Tenant in Copercenery.

Tenants in Copercenenery.

There are two kinds of tenants in *Copercenery*; that is, *Parceners* at the Common Law, and *Parceners* by custom.

After the course of the Common-Law, when a Man or Woman is seised in Lands or Tenements in Fee-Simple, or Fee-tail, and hath no other issue but Daughters, and dyeth; the tenements descend to the Daughters equally as Co-heirs; and they shall enjoy every one an equal part thereof, as tenants in *Parcenery*, or *Copartnership*, and are all as if were

one

one Heir to their Ancestor; And these Coheirs or *Parceners* may have a Writ called *Breve de participatione facienda*, to have the Lands equally divided and shared amongst them.

If a man seised of lands dye without issue, and the tenements descend to his *Sisters*; or if he hath no *Sisters*, and it descends to his Aunts: they be *Coheirs* or *Parceners* as aforesaid.

If there be two *Parceners*, one marries and hath issue and dieth, and afterwards her Husband holdeth one half, as tenant by the Courtesie; the Coheir or parcener that surviveth, and the tenant by the Courtesie, may make partition between them; And if the tenant by the Courtesie will not consent thereunto, the surviving Parcener may compel him by a writ *de participatione facienda*.

But if the the tenant by the Courtesie desires to have partition, and the parceners surviving will not agree to it; the tenant by the Courtesie can have no remedy: for he cannot have a writ *de participatione facienda*

againſt the ſurviving Parcener, although the parcener may have it againſt him.

Parceners by Cuſtom.

Parceners by Cuſtom. This Tenure is Gavel-kind, and is uſed only in *Kent*, except in ſome certain places in *England* beſides, and in *North Wales*. But the men of *Kent* only claim this as a right remaining unto them unconquered; and it is thus: If a man be ſeiſed in Fee-Simple or Fee-Tail in Lands or tenements of the Cuſtom and Tenure of Gavel-kind, and hath iſſue divers Sons and dyeth; All the Sons ſhall be *Coheirs*, and equally inherit thoſe Lands and tenements as Females do, and may make partition by writ *de Partitione facienda*, and divide, as in the caſe of Daughters at the common-Law.

Joynt-Tenants.

Joynt-Tenants. When a man being ſeiſed of certain Lands and Tenements, doth thereof enfeoff three or four, or more, to have and to hold to them and

and their Heirs; or to hold to themselves, for the term of their lives, or for anothers life, and they become seised by virtue of that Feoffment: these are said to be Joynt-Tenants.

Disseisors. Likewise if two or more disseise another of any Lands or Tenements, to their own use, the disseisors be Joynt-Tenants; but if it be but to the use of one of them, they be not Joynt-Tenants.

Now the nature of Joynt-tenants is, that the whole estate shall go to the Survivor.

As if there be 3 Joynt-tenants in Fee-Simple, and the one of them hath issue and dyeth, the two that Survive shall have the whole Tenements, and nothing thereof shall go to the issue of him that is dead: And if the second tenant have issue and dye, the third who is the Survivor shall enjoy the whole, and shall have it in Fee-Simple to him and his Heirs. *Survivor.*

But now there is a difference in tenants in Parcenery: for if there be three *Copartners*, and one hath issue and dyeth before there be any partition made, that part which belonged to

to her that is deceased, shall descend to her issue. And if such a Parcener dye without issue, her part shall descend to her *Coheirs*: so that this they have by Discent, and not by Survivourship as Joynt-Tenants have.

Survivourship.

And as the Survivourship taketh place among Joynt-tenants, so it doth amongst all persons who have Joynt-Estate, or possession with others in Chattels Real or Personal.

As, if a Lease be made to several persons for term of years, the Survivor of the Lessees shall enjoy all the Tenements during the term by vertue of the Lease.

And in like manner Goods and Chattels personal, whereof there be partners, shall go to the Survivour. And if a Bond be made to many persons for one Debt: and some of the Obligees dye, the Survivour shall have all the Debt. And so it is in all Covenants and Contracts amongst Parceners.

There may also be Joynt-tenants for term of life, and yet they have several Inheritances.

If

If Lands be given to two men to hold to them for term of their lives, and to the Heirs of their two bodies, here these *Donees* are Joynt-tenants for term of their lives, and have several Inheritances: For if one of them have issue and dye, the Survivour shall enjoy the whole during his life by Survivourship. And if the Survivour have also issue and dye, then the issue of them both shall enjoy the estate equally between them, as Joynt-tenants. *Several Inheritances.*

Now the reason why these are said to have several Inheritances, is because it is impossible for them to have an Heir between them, as a Man and Woman may have.

Therefore the Law maketh this distinction according to reason and the form of the gift; that is, to the Heirs that one getteth on the body of his Wife; and so likewise of the other: so that by this reason it must of necessity be, that they have several inheritances.

And if after the death of the *Donees*, the issue of one of the *Donees* dye

dye also, leaving no issue of his body Surviving, in this case the *Donor* or his Heirs may enter into the moyety of the Lands, as in his reversion, though the other of the *Donees* hath issue living.

In like manner if Lands be given to two Females and to the Heirs of one of them; in this case, the one of them that is, she that hath it but for life, hath a Free-hold: and the other hath a Fee-Simple: and if she that hath the Fee dye, the other who hath the Free-hold shall enjoy the whole during her life by vertue of her Survivourship.

And if tenements be given to two, and to the Heirs to be ingendred of the body of one of them; here the one hath Free-hold, and the other Fee-Tail.

If there be two Joynt-tenants, and they are seised of an Estate in Fee-Simple, and the one by Deed grants a Rent-charge to another out of that part which appertains to him; now during the life of the grantor, this Rent-charge is good and effectual; but it becomes void after the death of the Grantor. For the

Tenant

Tenant that Surviveth ſhall hold all the Land by Survivourſhip, diſcharged from the Rent-charge of the other.

Difference between Coheirs and Copartners

But amongſt *Coheirs* or Parceners it is otherwiſe: for if there be two Parceners in Tenements in Fee Simple, and before partition one chargeth his part by his deed with a Rent-charge, and dyeth leaving no iſſue, whereby his moyety deſcends to the other Partner; here that part ſhall not be freed of the Rent-charge; becauſe he cometh to this moyety by diſcent as Heir at Law.

If Joynt-tenants be deſirous to make partition between them, they may do it by conſent and agreement amongſt themſelves, and ſuch partition is good and binding againſt each other: but unleſs it be done by mutual conſent amongſt themſelves, the Law cannot enforce or compel them, or either of them to do it; becauſe Joynt-Tenants cannot have a writ *de Partitione faciendâ*, as tenants in Copartnerſhip may have.

If there be a joynt Eſtate of Lands and Tenements made to a man and his

his wife, and to a third Person, here the third Person shall have as much as the man and his wife; that is, one moyety: for the man and wife can have but half the estate, because they are but one person in Law.

In like manner it is if Lands were made to a man and his wife, and to two others; here the man and wife can have but a third part, and the two others the other two parts.

Tenants in Common.

Tenants in Common.

Such as have Lands and Tenements by several title, and not joynt title, and none of them knoweth what is several to him, whether it be in Fee-Simple, Fee-Tail, or for term of life; these are said to be tenants in Common, because they ought by the Law to hold, enjoy and occupy such Lands and Tenements in common and undivided, and to take the profits in common; and do come to the same Lands and Tenements by several titles, and not by one joynt title.

If a man enfeoffs two Joynt-Tenants

nants in Fee, and one of them *Aliens* his part to another in Fee; this *Alienee* and the other Joynt-tenant be Tenants in common, because they now ſtand ſeiſed by ſeveral titles; the one joynt-tenant by virtue of the firſt Feoffment made to him; and the other Joynt-tenant, and the *Alien* becomes ſeiſed in his moyety by vertue of the Feoffment of the other Joynt-tenant; ſo that the ſeveral feoffments make their titles ſeveral, whereby they become Tenants in common.

If there be three Joynt-tenants, and one of them *aliens* his part to another perſon in Fee, here the *alienee* is tenant in Common with the other two Joynt-tenants, and of the other two parts, the two Joynt-tenants be ſeiſed joyntly, and the Survivor of them ſhall have the whole of thoſe two parts by vertue of Survivourſhip.

If there be two Joynt-tenants in fee, and one of them gives his part to another in tail, here the *Donee*, and the other Joynt-tenant become tenants in Common.

Alſo if Lands be given to two men, and to the Heirs of their two bodies,

bodies, in this case these *Donees* have a Joynt-Estate during their lives; and if both of them have issue and dye, both their issue shall hold the Land as Tenants in Common.

If Lands be given to two men and their Heirs to hold to each a moyety, these are Tenants in Common.

If a man being seised in certain Lands doth enfeoff another in the half of it without limiting of the same half in severalty at the time of the Feoffment made; that is, do not distinguish that half from the other by particular bounds and limits; In this case the *Feoffor* and the *Feoffee* shall hold their parts of those Lands in Common.

Difference between Tenants for Life and in Common.

And as it is amongst Tenants in Common in Lands or Tenements in Fee-Simple or Fee-Tail, in the same nature it is also between tenants for term of life; as, if there be two Joynt-tenants seiz'd in Fee, and one of them lets to a man his part for term of his life, and the other Joynt-tenant lets to another man his part for term of life; these two Lessees be

tenants

tenants in Common for the term of their lives.

Likewise if a man lets Lands unto two persons for the term of their lives, and the one of them grants all his Estate of the part belonging unto him unto a third person; then this third person to whom this grant is made, and the other Tenant for term of Life, be both tenants in Common, during the lives of both the Lessees.

If there be three Joynt-tenants, and one of them releaseth all his right which he hath in the Land by his Deed to one of his fellows, then he to whom the release is made, hath the third part of the Lands by vertue of that release, and shall hold that third part with himself and his fellow in Common, and they two shall hold the other two parts joyntly.

Also if a joynt-estate be made unto a man and his wife, and to a third person, and that third person releaseth his right which he hath in that estate to the Husband; then the Husband hath the third persons moyety, and the wife hath nothing therein at all.

And

And if such third person release his right in his moyety to the wife, not naming her Husband in the release, then the Wife hath the third persons moyety, and the Husband hath nothing at all in it, but only *Jure uxoris*, in the right of his Wife: because the release shall work to invest the Estate in the person to whom the release is made, of all that appertained to him that made such release.

Tenants in Common by Prescription.

There may be also Tenants in Common by title of Prescription, that is, when two have holden lands Common undivided; the one, one half from his Ancestors, and the other, the other half from his Ancestors, or from whom the Estate is derived unto them undivided, time whereof the memory of man hath not known the contrary; these are Tenants in Common, by title of prescription.

Now these Tenants in Common ought in some cases to have for the maintenance of their possession several Actions; And in some cases they shall all joyn in one Action: for if there be two Tenants in Common;

mon, and they be disseised, they two cannot bring against the disseisor one Assize in both their names, but they must have against him two Assizes: for every of them ought to have an Assize of his half, because the Tenants in Common are seised by several titles.

But amongst joynt-tenants it is otherwise, for if there be never so many of them, and they be disseised, they shall have but one Assize in all their names, because they have all but one joynt-title.

Tenants by divers Descents.

There is likewise a difference in suing real Actions between Partners that be in divers descents, and Tenants in Common. For if a man who is seised in Lands in Fee dieth, leaving only two Daughters his Coheirs, and these two Daughters enter, and have each of them a Son, and dye without making any partition between them, so that the Lands descend equally to their two Sons, the one moyety to one of them, and the other unto the other, and they enter, and enjoy the same in Common, and be disseised; they shall not in this case bring two Assizes, but one Assize

ſize in both their names; for though they came in by divers diſcents, yet they be Parceners, and a writ de *Partitione faciendâ* lyeth between them. Nevertheleſs, they be not Parceners by reaſon of the ſeiſin and poſſeſſion which they have from their Mothers, but in reſpect to their Eſtate which deſcended to their Mothers from their Grand-father.

And ſo in reſpect and conſideration of their firſt deſcent that was to their Mothers, they have a title in Parcenery which maketh them Parceners; and they be but as one Heir to their common *Anceſtor* their Grand-father, from whom the Land deſcended to their Mothers. And therefore before partition made between them, they ſhould have but one Aſſize, though they came in by ſeveral diſcents.

And likewiſe in perſonal Actions in Treſpaſs, and ſuch like caſes which concern their Tenements in Common, the Tenants in Common ought to bring ſuch perſonal Actions joyntly in all their names; as for breaking their Houſes, cloſes, or

Paſtures;

Pastures; wasting, treading down, or otherwise spoyling their Grass; cutting or felling of their Woods, spoiling their Fruit-trees, filling in their Ponds, and such like. In these and all such kind of actions wherein they are joyntly concerned, the Tenants in common shall have one joynt Action, and recover damages joyntly.

Likewise if two Tenants in Common make a Lease of their two Tenements to another for term of years, reserving unto themselves a certain yearly Rent; if the Rent be in Arrear, they shall have one Action of Debt for the Rent against the Lessee in both their names, and not divers Actions.

Tenants in Common by divers Titles.

If two persons or more, have Chattels real or personal in Common and by divers titles, if one of them dye, the other who Survive, shall not have his part that is dead in those Chattels by Survivorship, but the Executors of him that dieth shall hold and enjoy his part with them that Survive, as the Testator did or ought to have done in his life-time.

If two persons have an estate in

common for term of years, and one of them puts the other out of his poſſeſſion, and enjoys all himſelf; then he that is ſo put out of poſſeſſion, may bring his Ejectment againſt the other for his moyety.

But if two perſons be poſſeſſed of Chattels perſonal in Common by divers titles, as of an Horſe, or an Ox, or a Cow, or the like, and one of them takes it into his own poſſeſſion, from the other; now the other hath no remedy, but to take this from him that hath done him the injury again, to occupie in Common, when he hath an opportunity; that is, in plain terms, he may come by it as well as he can.

CHAP.

CHAP. II.

Of Leaſes, Covenants and Conditions; Proviſo's and Reſervations, Surrenders and Aſſignments of Leaſes.

IN all Leaſes, as we have ſaid before in the title of *Tenant for term of Years*, there muſt be Leſſor and Leſſee: He which demiſes or lets Land to Farm, is the Leſſor; and he who takes the Land; that is, unto whom it is ſo let or demiſed, is called the Leſſee; in more vulgar terms underſtood by the Country Farmer by the title of *Landlord* and *Tenant*. *Leaſes and Covenants.*

According to our general and common acceptation now adays, every Leſſee for Life, Years, or at Will, though it be but of a Cottage, or never ſo ſmall a Tenement or Houſe, is called a Firmor or Farmer, and the Premiſes a Firm or Farm; and ſo we ſay in the Writ, *A firma ſua Ejecit*; which may be the reaſon they are called Farms. *Firmor or Farmer, who it is.*

But anciently the chief Meſſuage in a Pariſh or Country Town, was called by way of preeminency by the name of a Farm; and unto this Farm belonged great Demeaſnes of all ſorts, as Gardens, Meadows, Paſtures, Rivers, Woods, Moors, Waters, Mariſhes, Furzes, Heath, and alſo Meſſuages, Houſes, Toſts, Mills, and the like: And all theſe are comprehended under the title of Lands. Theſe *Demeaſnes* were uſed to be let out to others for term of life, years, or at will.

Demeaſnes.

Theſe ancient Farms, (or Ferms, which you will call them; which appellation or dialect differs according to the County; In *Eſſex*, *Norfolk*, and *Suffolk*, they call them Ferms and Fermors; but the Weſt and beſt are called Farms and Farmors) theſe Farms, I ſay, attained to this title from the old *Saxon* word *Fermion*, which ſignifies to feed, provide or yield Victuals; ſo that a Farmor ſignifies a Victualler; for anciently the Landlords did not receive money upon their Leaſes for their Rent, but Corn and Victuals, being ſuch as

The name & nature is now alterd.

as the Farm yielded of its growth; until it came by degrees into part Money and part Victuals; and at last, about the time of King *Henry* the first, the Rent reserved was turned into Money, and so hath hitherto continued amongst most men.

Ancient Rents.

Yet amongst some, where the ancient Rents or Reservations are not altered, the Rent is in Corn or Victuals to this day, especially in Colledge and Church-leases; and doubtless many of those ancient reservations received their utmost period in the general dissolution of the Religious Houses; to the no small derriment of the Industrious Farmer.

Co. 7. par. f. 23.

All Leases for years reserving Rent, must be made of Lands and Tenements, whereunto the Lessor may come to distreyn; so that a Rent cannot be reserved by a Common person out of any incorporeal inheritance, as Adowsons, Commons Offices, Tythes, Fairs, Markets, Liberties, Franchises, and the like: but if a Lease be made by Deed in writing of one of them, one may have

Co. 1. par. Inst. p. 47.

an Action of Debt by way of contract, but one cannot distreyn: but if any Rent be reserved in such case upon a Lease for life, it is utterly void.

23 Lib. Ass 6. Leases for term of years are Chattels; so that if a man have a Lease of Lands for five hundred years, it is a Chattel, and goes to his Executor or Administrator, if he dispose not otherwise of it before his death.

Every man who is seised of Lands in Fee-Simple, may Lease out his Lands for what time or term he pleaseth himself; And so likewise might Bishops have done formerly, before the Statutes restrained them.

32 H. 8. C. 28. 13 El. C. 10. 18 El. C. 6. 1 Jac. C. 3. Herns law of Convy. pag 62. 67. 68. A Tenant in tail being at age may by Deed in writing Lease out such Lands as have been let to Farm twenty years next before the Lease made, reserving the old Rent or more, the Words *Without Impeachment of Wast* must be omitted in it, and it must commence from the day of the making, or date. And if there be an old Lease in being, it must be surrendred, expired or end-

ed.

ed within one year after the making of the new one, or else it is void. And a Lease thus made, binds the issue of the Tenant in tail, if he dye before the term be our: but if the Tenant in tail dye without issue, the *Donor* may avoid the Lease by his entry, and so many he in Remainder; And though he accept the Rent, yet he doth not thereby confirm the Lease.

A man that is seised of Lands in Fee Simple or Fee tail, in the right of his Wife, may make a Lease by Indenture in writing of his Wifes Land, in the name of himself and his Wife, and she to seal thereunto, reserving the Rent to himself and his Wife, and to the Heirs of his Wife; this Lease shall be good against the Woman and her Heirs after her death.

Bishops, Deans and Chapters observing the Rules aforesaid, may make Leases of such Estates as they are seised of in Fee in Right of their Churches: and so may Masters, Provosts, and Fellows of Colledges, and Wardens of Hospitals, if they be not prohibited by

the private Statutes of their Foundations.

But neither Tenant in tail nor any of the persons before named, can let for any longer term than three lives, or one and twenty years; but for what term under they please. But if they do not observe these Rules in their demises, yet their Leases shall be good against them for their lives.

Cook. 8. Jac. 144. If a lessee for years grant a Rent-charge, and after surrender, yet for the benefit of the Grantee, the term hath continuance; although in *Reversitate*, it is determined, and the Grantor himself shall not derogate from his own grant, to make it void at his pleasure.

Idem. Tenant for years of an Advowson grants the next Avoidance, and Donation, if the same Church should become void during the term, &c. And afterwards surrenders his term; yet if the next Avoidance be within the term, the grant is good, for the years cannot determine, but by effluction of time, and the Law implies a limitation, if the Church do become void during the term; *Quæ expressa*

expressio eorum quæ tacitè insunt, nihil operatur.

A Lessee covenanteth for himself his Executors and Administrators, with the Lessor; That he his Executors or Assigns shall build a Brick-wall upon part of the demised premises, And afterwards the Lessee makes an assignment of his Lease to *C. D.* for his term; in this Case the Assignee is not bound to build the Wall. Idem. 25 Eliz. Fol. 16.

When a Covenant extends to a thing in being, parcel of the demise, Then the thing to be done by force of the Covenant is annexed, and appurtenant to the thing demised, And shall bind the Assignee, although by express words in the Covenant he be not bound.

But if the Covenant extends to a thing which had no being, at the time of the demise made, that cannot be annexed or appurtenant to a thing which had no being.

If a Lessee Covenant to repair the Houses demised to him, during his Lease, This is part of the Contract, and shall bind the Assignee although by the Covenant, he be not expressly bound.

But where the Covenant concerns a thing not in being, at the time of the demise, but to be made after, this shall bind the Covenantor, his Executors and Administrators, but not the Assignee.

If a Lessee Covenant for him and his Assigns to build a House upon the Land of the Lessor, which is not parcel of the demise; or to pay any collateral sum of Money to the Lessor, or to a Stranger, this shall not bind the Assignee.

If a man demise Lands for years, with a stock of Cattel or sum of Money rendring Rent, And the Lessee Covenants for him, his Executors, Administrators and Assigns, to deliver the stock of Cattle, or the sum of Money at the end of the term: This Covenant shall not charge the Assignee.

If an Assignee of a Lessee be evicted he may have a writ of Covenant, so shall a Tenant by Statute or by *Elegit*, or he to whom the Lease is sold by vertue of an Execution.

If a man grant to a Lessee for term of years, that he shall have so many

Estovers

Estovers as shall serve to repair his House, or that he shall burn in his House or the like, during the term; That is, appurtenant to the Land, and shall run with the same as a thing appurtenant, in whose hands soever the same cometh.

The Statute extendeth only to Covenants which touch the thing demised, and not to collateral Covenants. 32 H. 8. C. 24.

An Assignee of an Assignee, Executors of an Assignee, Assignes of Executors, or Administrators of every Assignee, may have an Action of Covenant; for all are comprised within this word (Assignees) and the same Right that was in the Testator or Intestate, descends to the Executors or Administrators. Cook, lib. 5.

A Lease is made for life, the remainder over for life, the remainder over in Fee; the first Lessee maketh Waste: And because he in the Fee hath no remedy by the Common-Law, and Waste is a wrong prohibited, he shall have relief in Chancery. Cromp-ton. 49. b.

A Woman sole, takes consideration for making a Lease for one, and 44 Eliz.

twenty

twenty years, and then Marries; and she and her Husband made the promised Lease at the one and twenty years end; The Lessee surrenders, and takes a new Lease for one and twenty years more, the Husband dyes, the Wife *ousles* the Lessee, who sues in Chancery to have the first Lease continued for the first one and twenty years, and could not have remedy, because the surrender was voluntary, and the Court gives no relief against a voluntary Act.

A Lease is made of a House and Wood, wherein it is Covenanted That the Lessee should have House-boot and fireboot; by this it is implied and meant, that he shall not have any of the Woods to use or convert to any other purpose; but that they do belong to the Lessor. And the Lessor shall have help in Chancery, leaving to the Lessee sufficient for House-boot and Fire-boot.

Lit. Ten. li. If a man demise any Lands or Tenements to another by Lease parol, the Lessor ought to be seised of the Lands or Tenements which he lets

lets, at the time of the Leaſe parol made; or elſe he cannot maintain an Action for his Rent; for the Leſſee may plead that the Leſſor had nothing in the premiſes at the time of the Leaſe made, and then is barred of his Action: but if the Leaſe be made by Deed Indented, then the Leſſee cannot plead this plea thereunto.

If a man let's Lands to another by Leaſe, to hold the ſame at the will of the Leſſee; the Law intends it to be at the will of the Leſſor alſo, and he may put the Leſſee out when he pleaſes; likewiſe if it be let at the will of the Leſſor, it is intended at the Leſſees will alſo; for the Leſſor cannot force him to ſtay longer than he pleaſes. Cook. 1. part. Inſt. 55.

Covenants.

A Covenant made between Landlord and Tenant, that the Tenant ſhall have a new Leaſe upon the ſurrender up of his old Leaſe; And afterwards the Leſſor makes a Leaſe by Fine for more yeart to a third perſon; in this caſe the Leſſor hath broke his Covenant, although the Leſſee did not ſurrender: which by the words of the Covenant ought to Noys Maxims. p. 13.

have

have been the first act; because the Lessor by letting the Lease to a stranger, did disable himself either to take the Surrender or make the new Lease.

Rent in Arrear upon a Lease for years, goeth to the Executors of the Lessor if he dye: As if *John Doe* makes a Lease for years to *Richard Roe*, and the Lessee covenanteth and granteth to pay unto the Lessor, his Heirs and Assigns, the sum of twenty pounds yearly during the term in the Lease granted; In this case if the Lessor dyes his Executors shall have the Rent in Arrear, and not his Heirs.

Herns Law of Conv. p. 107, 108, 109. Godbolts Rep. fol. 69. 70.

John at Heath lets a Lease for years to *W. C.* and the Lessee covenants with the Lessor for him and his Assigns, to build a Brick-wall or an House upon the Lessors Land, or pay a collateral sum of mony to the Lessor; and afterwards the Lessee assigns over his term to another: there this Covenant shall not bind the Assignee, because the things were only collateral, and were not in *Esse*, nor part of the demise at the time of the Lease made.

If

If there be a Covenant in a Leaſe, that if the Rent be behind and unpaid, for ſuch a time (that is, by the ſpace of ſo many days after the uſual day or time of payment, in the Leaſe appointed and reſerved) then the Leaſe to be void; In this caſe, although the Leſſor do accept of the Rent after ſuch *forfeit* made, here no ſuch acceptance of the Rent can make the Leaſe Good. Dyer. f. 51.

If a Tenant take a Houſe and Lands by Leaſe for years, and covenants with the Leſſor to ſupport, uphold and maintain the Houſes during this term, and to leave the Houſes and Lands in as good repair, plight and eſtate as he found them: In this caſe if it ſhould happen that the Houſes be caſually burned by fire or lightning, or blown down by a Tempeſt, or deſtroyed by any other accident; If the Leſſee do not repair and build them again, and leave them as good as he found them, the Leſſor may ſue his ſaid Covenant againſt him at the end of his Leaſe; but if a Tenant make waſte in cutting of Wood or Timber contrary to the Proviſo's, Exceptions or Co- Noys Max. p. 167

Covenants in his Leaſe, for ſuch a breach the Landlord may bring his Action of Covenant before the end of the term.

Hughs Grand Abridgements 1. par. p. 492. C. 19.

A man takes a Leaſe for years, and covenants and grants to and with the Leſſor, for him and his Executors, to repair the Houſes as often as need requires: and afterwards the Leſſee aſſigns over his Leaſe to another, and the Aſſignee ſuffers the Houſes to decay for want of repairs; in this caſe the Leſſor may bring an Action of Covenant againſt the Aſſignee, although he be not named in the Covenant.

Co. 1. par. Inſt. fol. 41.

A Landlord let's a Leaſe, and covenants with his Tenant that he ſhall have ſufficient hedge-boot, to be aſſigned him by the Landlord or his Bailiff: In this caſe the Tenant may not take hedge-boot without aſſignment.

Perkins Tit. conditions, 738.

If a man by Indenture take a Leaſe of a Houſe that is old, ruinous, or wanteth repairs, and covenants with the Leſſor to leave this Houſe at the end or expiration of the Leaſe in good repair. In this caſe he is bound to leave this Houſe in good repair, but

but if he do not covenant to do it, the Law then will not oblige him to do it.

A man by Indenture takes a Lease for years of a Wood, and covenants with the Lessor, to leave his Wood in as good a condition as it was at the time of the Lease made; And during the term the Wood is destroyed, and blown down by violent Winds, and Tempests: in this case the Landlord can have no Action against the Tenant for the not performing of this Covenant; because it is impossible for him to perform it; and the Law enforceth no impossibilities: otherwise it is if he take a House, and that be blown down. Hughs grand Abridg. p. 499.

Touching bonds for performance of Covenant, if a man take a Lease for years rendring Rent, and enter into bond to the Lessor to perform all Covenants and Agreements contained and comprized in the Lease; if he fail in payment of Rent, the bond is forfeited; for the payment of Rent is an agreement. Goldsborow. p. 16.

If a man be bound in a bond, to repair the House of the Obligee as often Dr. & St. lib. 2. cap. 47.

, often as need shall require during
certain time, and afterwards th

Houses want reparations, In thi
case, although the *Obliger* doth
not know that they want Reparati
ons, yet he is bound to take no
tice of it at his peril, for igno
rance will be no excuse in this case
because he hath bound himself t
it.

But if the Condition had been
that he should repair such Houses,
he to whom he was bound shoul
assign, and after he assigneth certai
Houses to be repaired, but he tha
is bound hath no knowledge of tha
assignment; this ignorance shall ex
cuse him in the Law, because he hath
not bound himself to any reparation
in certain, but to such as the *Obliger*
will assign; and if he assign none
the *Obliger* is bound to none; An
therefore because he that should
make the Assignment is privy to the
Deed, he is bound to give notice o
his own Assignment; but if the As
signment had been appointed to
have been made to a stranger, then
the *Obliger* had been bound to have
taken notice thereof at his peril.

If

If a man makes a Lease for years with warranty, yet this is not a warranty in the Law, but a Covenant, because the Lease is but a Chattel; and if the Lessee be ousted, he may bring his Action of Covenant against the Lessor.

If *A.* be seised of twenty acres of Land, and let the same to *B.* by Lease for life or years, and *A.* reserves to himself five shillings Rent payable at *Christmas*, and *B.* binds himself to *A.* in a bond of one hundred pound to pay the Rent reserved upon the Lease justly according to the Law; if before any day of payment *A.* puts *B.* out of any part of the Land, and he doth occupy the residue for the whole term, and will not pay any Rent, yet the bond is not forfeited; for by putting the Tenant out of parcel of the Land, the whole Rent is in suspence: but if one day of payment be past before the *Ouster*, then the Tenant must pay the Rent, or else he forfeits his bond.

But if a stranger who hath no Right in the Lands do put out the Lessee for years out of the same Land be-

before any day of payment, and keep possession thereof until the day of payment be past; In this case the Tenant ought to pay his Rent at the day whereon it is appointed to be paid, or else he forfeits his bond. Perkins, 828. Copartners.

If three *Copartners* be seised of a Mannor, and one of them without consent of the other two let's a Lease of the whole Mannor in her own name unto *I. D.* for five years, paying ten pound yearly at *Christmas* unto the Lessor and her Heirs, and *I. D.* enters into bond in five pound to pay the Rent accordingly, and before any day of payment is come, the other two *Copartners* who agreed not to the letting of the Lease, do put the Lessee out of the whole Mannor, and keep the possession till a day of payment be come: here the Lessee ought to pay a third part of the Rent reserved to his Lessor, or otherwise he forfeits his Bond; because the other two *Copartners*, who ejected him out, have right but in two parts of the Mannor.

Hughs gr. Abr. par. p. 428.

A man makes a Lease to three persons upon this condition, that neither they nor any one of them shall

shall alien, set, or let that *Lease* to any other, without license first obtained from the *Landlord*. Now if the *Landlord* do give license to any one of them to let or alien, then the other two may alien without license: for the condition being determined to one, is determined to all.

In the same nature is a release where many persons commit a trespass, if he against whom the trespass is committed do release one of the trespassers, that release is as effectual to all the rest, as if they had been particularly named therein.

If a *Landlord* do enter for a condition broken, or the Tenant surrender up his *Lease*, or his term be expired; yet the *Landlord* may have an Action of Debt for the Arrears of Rent if any be. Noys Maxims, pag. 72.

If a man let's a *Lease* of *Lands* upon a special condition; that is, that the *Lessee* shall not alien the same to such a man or such a man; then the condition shall be taken according to the words; And not withstanding that condition, they may be alienated Dr. & St. lib. 2. C. 35.

to

to any other, but to them to whom it is expresly prohibited that the Lands should not be aliened unto: And if the Lands in that case be aliened to one that is not excepted in the condition, then he may alien the Land to him that is first excepted, without breaking of the condition: for conditions be taken strickly in the Law, and without equity.

As; if a Lease be made to *A.* upon condition that he shall not let or alien the same to *B.* if the Tenant alien it to *C.* and he alien it to B. the condition is not broken.

Perkins, 10. If a man be seised of Lands in Fee, and let the same by Indenture of lease to a stranger, paying five pound Rent *per annum*, with a condition that if the Lessee will hold over ten years to him and his Heirs, that then he shall pay twenty pound *per annum*, and the Indenture is executed by Livery and Seisin to the Lessee: In this case the Lessor shall have an Action of Debt for the Rent in Arrear within the ten years; which proveth the free-hold and the Fee are not in the Lessee before the ten years expired

red; but after the expiration of the ten years, if the Lessee doth continue the possession of the same Land, and doth occupy the same by vertue of the *Indenture*, then hath Fee, and shall pay the twenty pound as a Rent Seck.

But if a man seised in Lands doth let the same Land by Lease for term of life, yielding to him a Rose for the first six years; and if he will hold the Land over the six years, then to pay three marks *per annum*; Here the free-hold is immediately in the Lessee. Co. 1. par. Inst. f. 218. b.

A man makes a Lease for years, with this condition, that if the Lessor do alien the Reversion within the term granted by the Lessee, then the Lessee shall have the Fee; and the Lessor doth alien the Reversion in Fee by fine to a strangers: In this case the Lessee shall not have a Fee, for the Free-hold and the Fee are lawfully in the *Conusee* before the Lessee can take it by condition: but if the Lessor had granted the Lands to a stranger by Deed only, then the Lessee should have had Fee by the condition. Perkins, 729, 730.

If

Perkins. 833. If a man have a *Lease* for years and demise or grant the same upon condition, and dye; his Executors or Administrators shall enter for the condition broken; for they are privy in right, and represent the person of the dead.

Lit. lib. 3. C. 8. If a man make a *Lease* for years upon a condition that the Rent shall be paid at *Christmas*, and before that time come, the *Lessor* give a general Release to the *Lessee* of all Actions and Demands, this Release doth ndo acquit the *Lessee* of the Rent, but the *Lessor* may sue for it, because it was neither due, nor to be paid at the time of the Release made; and it is a thing not meerly in Action, because it may be granted over.

Dyer. p. 67. If a *Landlord* let's a *Lease* for years to two Tenants to hold Joyntly, with a condition that if the *Lessees* dye before the end of the term, the *Lease* shall be void: Now the *Lessees* makes division, and one of them aliens his part, and dyes; in this case the *Lessor* cannot enter upon the part of him that dyed; but the Alienee shall enjoyn his half-part during

during the life of the Surviving Leſſee.

A Leaſe made for years upon condition, that if the Leſſee demiſe the premiſes or any part thereof, other than for a year, to any perſon or perſons, then the Leſſor and his Heirs to re-enter; the Leſſee afterwards deviſes this *Leaſe* to his Son by his Will: this is a breach of the condition.

If a man of his meer motion give Lands to *H. H.* and to his Heirs by Indenture, upon condition that he ſhall yearly at a certain day pay unto *John at Style*, out of the ſame *Land*, a certain Rent; and if he do not pay the Rent, that then it ſhall be lawful to *John at Style* to enter; and if the Rent in this caſe be not paid to *John at Style* the ſaid *I. S.* may not enter into the *Lands* by the *Law*, though the words of the Indenture be that he ſhall enter; for there is an Ancient Maxim in the *Law*, that no man ſhall take advantage in a condition, but he that is party or privy to the condition: and this man is not party nor privy, and therefore he ſhall take no advantage of it. Dr. & St. lib. 3. cap. 20. fol. 93.

In many cases the intent of the party is void to all intents, if it be not grounded according to the Law.

Dr. & St. 2o.C. f.93. As, if a man make a Lease to another for term of life, and after, of his meer motion, he confirmeth his Estate for term of life to remain after his death to another and his Heirs: In this case that Remainder is void in Law; for by the Law there can no Remainder depend upon any Estate, but that the same Estate beginneth at the same time that the remainder doth: and in this case the Estate began before, and the confirmation enlarged not his Estate, nor gave him any new Estate. But if a Lease be made to a man for the term of another man's life, and after the Lessor, only of his meer motion, confirmeth the Land to the Lessee for term of his own life, the Remainder over in Fee: this is a good Remainder over in Fee.

Dr. & St. lib.2.C. 20.p.94. No grant can be made, but to him that is party to the Deed, except it be by way of Remainder; And

there-

therefore if a man make a Leaſe for term of life, and afterwards the Leſſor grant to a ſtranger that the Tenant for term of life ſhall have the Land to him and his Heirs; that grant is void, if it be made only of his meer motion without recompence.

Likewiſe if a man make a Leaſe for term of life, and after grant the Reverſion to one for term of life, the Remainder over in Fee, and the Tenant Attorneth to him that hath the Eſtate for term of life only, intending that he only ſhould have advantage of the grant: his intent is void, and both ſhall take advantage thereof, and the Attornment ſhall be taken good according to the grant. Ibid.

If a Tenant for the term of another mans life dye, living the other man, he that doth firſt enter upon the Eſtate, after his death, ſhall be Tenant for the other mans life, and ſhall be liable to the payment of the Rent reſerved. Co. 1. par. Inſt. fol. 41.

If a Tenant hath a Leaſe for twenty years, of Lands and Tenements, and grant the ſame Lands for part of his Perkins, 693.

term to a ſtranger, reſerving t
himſelf forty ſh illings Rent; In th
caſe he may diſtreyn for the Re
reſ rved, or have an Action of De
at his pleaſure, becauſe by comm
Intendment he is to have the ſam
Land after the years determine
becauſe he hath granted but parc
of the years, ſo that the Remaind
remains in him.

Idem. 108. If Rent be granted to a man, h
may grant it away to another befo
he be ſeiſed thereof.

Co. 1. par. Inſt. fol. 46. If a man and his wife be ejec
of a term in the right of his wif
and the husband bring an *Ejectio
firme* in his own name, and do rec
ver, and dye; In this caſe his Exec
tors ſhall have it; and not the wife
b cauſe the Recovery in his o
name did veſt the term in himſelf.

Cook. ibid. If a man be poſſeſt of a term
forty years in right of his wife, a
make a Leaſe for twenty years r
ſerving Rent, and dye; here the Ex
cutors of the husband ſhall have t
Rent for that term, but the wi
ſhall have the remainder of the ter
when the twenty years is out: but
he had granted the whole term

she could have had no thing.

A Release made to a Tenant for term of years before his Entry, is void; but a Release of the Rent before Entry, is good. Id. 1. par. Inst. fol. 270.

The Tenant may grant away his Interest to another before Entry; and although the *Lessor* do dye before Entry, yet the Tenant may enter into the Lands; and if the Lessee dye before he enter, his Executors or Administrators may enter; and if a Lease be made to two, and one of them dye before entry, the other may enter by survivorship; and a *Lessor* cannot grant away a Reversion by the name of a Reversion, before the entry of the Tenant.

If a man grant to a Tenant for years, that he shall have so many *Estovers* as shall serve to repair his house, or that he shall burn within his house, or such like, during the term, this is appurtenant to the Land, and shall run with the same as a thing appurtenant in whose hands soever the same cometh. Co. 1 par. Inst. f. 41.

If Two Tenants in common do grant a Rent of ten shillings, this is several, and they shall be charged Idem, 1. par. Inst. f. 197.

with twenty ſhillings Rent: but if they make a Leaſe, and reſerve ten ſhillings rent, they ſhall have no more but only ten ſhillings between them.

If two *Copartners* make a Leaſe reſerving Rent, they ſhall have the Rent in common, as they have the Reverſion: but if afterwards they grant the Reverſion, excepting the Rent, then they ſhall be Joynt-tenants of the Rent.

Dyer 56. & 82. If a man leaſes Lands for years reſerving Rent, and a ſtranger doth recover part of the Land, then the Rent ſhall be apportioned. *viz.* divided, and the Tenant ſhall pay having reſpect to that which is recovered, and to that which ſtill doth remain in his hands according to the value, to each party proportionably.

If a man make a Leaſe excepting a Cloſe and Wood, the Law giveth him a way to come to it.

Perkins, 117. Hutton. Rep. 104. If a Tenant for years do take a new Leaſe for more years, this is a Surrender in Law of the old Leaſe. *Watt. and Maidwels caſe. Hil. 3. Car. R. 1302. B. R.*

Noys Max. 74. A Leſſee for years cannot Surrender before his term begin, neither

can

can he surrender part of his Lease, but he may grant part of it.

If a Tenant for life or years, remove his goods out of the house and land, by reason of the greatness of the Rent, or for any other cause, and the Lessor do enter into the House and Lands; this is no surrender of the Lessee. Idem p. 72.

If a Tenant for years assign over his term and dye, his Executors shall not be charged for Rent due after his death.

And if the Executors and Administrators of a Lessee for years do assign over their right in the Lease, there lieth no Action of Debt against them for Rent after such an Assignment by them made.

If a Tenant for years assign his Lease to another, the Landlord may charge which of them he will: but if he once accept of the Rent from the Assignee, knowing of the Assignment, he cannot afterwards bring an Action of Debt against the Lessee, for Rent due after the Assignment. H. rn. law of Conv. p. 110.

If a Lessor grant away the Reversion, after the Assignment of the Lessee; in this case the Grantee cannot Popham. 55.

not have an Action of Debt against the Lessee for the Rent, because there is no privity between them.

Perkins, 536. If a *Lease* for years be made to a man without any consideration, the Lessee shall be seised to his own use.

Dr. & St. l.1.C.24. If a man make a Lease of *Lands* to another, and to his Heirs for the term of twenty years, intending that if the Lessee dye within the term, that then his Heirs should enjoy the Lands during the Term; In this case his intent is void: and if the Lessee dye, his Executors, and not his Heirs shall enjoy the term; for by the Law of the Land, all Chattels shall go to the Executor, and not to the Heir.

Hern. L. of Conv. p. 104. If a man let's a house with the appurtenances, no Land passes thereby: but if it be with all Lands thereunto belonging, here the Lands used with the houses do pass.

Terms de ley, Estopple. Co.1.par. Inst. fol. 47. If a man take a Lease of his own Land by Indenture, he is then concluded to say that the Lessor had nothing in the Land at the time of the making of the said Lease; but after the Lease is out, the *Estoppel* is removed.

If

If two persons be Joynt-tenants of a Lease for years, and one bid the other go out of the house, and he goeth out; he that goeth so out may have an *Ejectione firmæ* against the other, as well as if he had Ejected him out by force. Beverlies case 24. Car. Claytons Rep. p. 111.

CHAP. III.

Of Payment of Rent, Acceptance, and Extinguishment thereof; Demands, Entrys, Dates, Continuance, Limitations, and Determinations of Leases.

IT ought to be a principal care of a Tenant, above all things to provide his Rent at the time of payment, whereby he may avoid much *Slavery* and *Knavery*, of cruel biting Landlords.

If a Tenant be to pay his Rent to his Landlord at our *Lady-day* and *Michaelmas*, or within fourteen or fifteen days after either of the

ſaid Feaſts; in this caſe, he is not bound to pay his Rent until the laſt day limited for payment, for that is the legal day of payment, and the other before voluntary.

And if there be a clauſe, that if the Rent be behind by the ſpace of fifteen days (more or leſs) after any of the ſaid days of payment, then the Leaſe to be void; In this caſe, if the time limited be fifteen days, then the Tenant ſhall have thirty days after any of the ſaid Feaſts, to ſave his Leaſe: But if the clauſe in the Leaſe be, that if the Rent be behind for the ſpace of fifteen days next after either of the ſaid Feaſt days of payment, here the Tenant hath but fifteen days only allowed him: and ſo the diverſity is to be noted in this caſe in the words of a Leaſe, which with a very little and ſcarce obſervable alteration makes ſo much advantage for the Tenant. *Co. 10. lib. f. 227. Cook 1 par. Inſtitutes, f. 202. Hern. Law of Conv. p. 23.*

Hern. p. 22, 23. If a man take a Leaſe for years to pay his Rent at our *Lady day* and *Michaelmas*, or within fifteen days after either of the ſaid Feaſts, and the

the Landlord dye after either of the said Feasts, and before the fifteen days be out; the Heir in this case shall have the Rent then; for the first day is but voluntary, and the legal day of payment is at the end of the fifteen days: and if the Tenant before that day pay the Rent, such payment is voluntary, and not satisfactory; but if payment be in the Morning, and the Landlord dye at Noon, it is good to give Seisin: and though this payment be voluntary, yet it is Satisfactory against the Heir. *Hare and Savills case. M 7. Jac. in com. B. Brownl. Rep. 2. part. f. 273.*

If a Tenant for years be to pay his Rent at *Michaelmas*, and to perform other Covenants; and if he be bound in any Obligation to pay his Rent precisely at the day; he must in this case seek out his Landlord to pay him; but if his Obligation be only to perform the Covenants in the Lease, he may then tender his Rent upon the Land, (if no other place be by agreement appointed for the payment thereof) and it is sufficient: for the payment is of the nature of the Rent. Noys Max. p. 50.

Rent reserved. *Manly and Jennings case. Parch.* 10. *Jac. in C. B. Brownl. Rep. 2. par. p* 176.

When one is to pay Rent at a certain day, he hath all that day till night to pay it; but if it be a great sum, he must then have it in readiness so long before Sun-set, as they that are to receive it may see to tell it, for they are not bound to tell it by Candle-light.

If a *Parson* let his Glebe-lands to a lay-man, the Tenant shall pay the Parson Tythe, of that Land besides the Rent: for the Tythes are of Common right.

Co. 1. part. inst. f. 47. & 292.

If a man let out by lease a stock of Cattel or other Goods, (as it is very usual now a-days to Lease out Silk-stocking-frames to the *Weavers*,) and the Rent be to be paid at several days; if the Rent in this case be in Arrear, the Lessor cannot bring an Action against the Tenant or occupyer thereof, until all the days be expired; In like manner as it is in an Obligation with condition for several payments; because these are personal contracts. But it is otherwise in case of a Lease for years,

years, which is a real Contract, for there the Landlord may have a Action of Debt against the Tenant, after every day of payment, if default be made; or he may distreyn, at his Election.

If there be two Joynt-tenants, and they make a *Lease* for years, by Parol or Deed poll, and reserve Rent to one of them; this shall enure to them both: but if it be by Deed indented, it shall enure to him alone, by way of conclusion. *Co. 1. par. Inst. f. 47. Co. 8. l. f. 70, 71.*

If an Heir let a Lease to a Tenant for life, and reserves a Rent; against whom the Mother of the Heir recovers her Dower and dyeth; the Tenant shall have the Land again for his life, and the Rent is revived. Cook on Lit. f. 42.

If the Successor of a Parson or Vicar accept the Rent of a Lease for years made by his predecessor; yet this acceptance is worth nothing, for the Lease is void by death; but of a Lease for life, it is otherwise. *Pennants case.* Cook l. 3. f. 65. 66.

But if a Bishop accept the Rent upon

on a Leaſe for years, he ſhall never avoid it; for it was but voidable only, and his acceptance hath now confirmed it.

Acceptance. If a man have Lands in the right of his Wife, and he and his wife let theſe Lands for years reſerving a Rent, and afterwards the Husband dyes, and ſhe before any day of payment takes another Husband, who accepts the Rent and dyes: by this acceptance the Leaſe is affirmed.

In like manner if a man and his Wife let the Lands of his Wife for years rendring Rent, and the Husband dyes; if the Wife accept the Rent, it is a good Leaſe. *Terms of the Law, Acceptance.*

But if a Tenant for life Leaſe lands for years and dyes, the Leaſe is void, and the Rent which is reſerved upon the Leaſe is determined. And although he in remainder do accept the Rent, yet his acceptance will not make it good: for when it is once void by death, no acceptance after will make it good.

So likewiſe, if a Tenant in Dower leaſe for years and dye, the Leaſe is void,

void, and acceptance of the Rent by the Heir will not make it good again.

A Lease for years may be confirmed for a time, or upon condition, or for a piece of the land; but if it be a Frank-Tenement, it shall enure to the whole absolutely. Noys Max. p. 78.

Observe this difference between a *Lease* for life and a *Lease* for years: in case of a *Lease* for life, though the conclusion of the condition be, that it shall be void, yet acceptance of the Rent due after the breach, doth affirm it, and make it good again. *Pennants case*, 38. *Eliz. Co. 3. l.*

If a Parson let a *Lease* for years of his Glebe-land, if it be confirmed by Patron and Ordinary, it shall bind the Successor, or else not. Cook Inst f. 300.

If a *Lease* be made to a man for the term of another mans life, and afterwards the *Lessor* only of his meer Motion, confirmeth the *Land* to his *Lessee* for term of his own life, the Remainder over in Fee; This is a good remainder in the *Law*. Dr. & St. 2. l 20. chap. f. 193.

If

Hern. l. Conv. p. 118.

If a man let Lands for life or years, reserving Rent, and do enter into any part thereof, and take the profits; the whole Rent is thereby extinguished, and shall be suspended during his holding thereof. *Leonards Rep.* 110. *Goddards case*, Mich. 34 *Eliz. Com. Banc. Ownes Rep. fol.* 10.

Co. l. par. inst. f. 202.

If the Tenant come to the Landlord at any place upon the ground at the day of payment, and tender his Rent to the Landlord, it is good enough, and shall save the condition; and the Landlord is bound to receive it, although it were not at the most *notorious* place, nor last instant of the day; for he may tender his Rent at any time of the day, although the last instant be the legal time of payment.

But observe by the way, that a tender of Rent must be of the whole Rent, without deduction of Taxes, or Assessments, or any other charges; for stoppage is no payment in the Law. *Tr.* 23. *Car. in B. R. Regist. pract. p.* 327.

Co. l. par. Inst. f. 202.

If a man let Land by Lease for years to another, reserving Rent

of

of the Land to be paid at *Michaelmas* and our *Lady-day*, or within fifteen days after, and for default of payment to re-enter, In this case it is sufficient and lawful for the Tenant to tender his *Rent*, the last hour of the last day, if the money can be told in that time before it be dark; and so it is sufficient for the Landlord to demand it the same hour.

If a Lease be made with this Proviso, That in case of non-payment, the Landlord to re-enter; here if the Landlord distreyn, he may not re-enter, but he may accept of the *Rent* and yet re-enter; but if he do receive the next *Rent* again, then he cannot re-enter, for that establisheth the Lease. Entry into an acre of land, in the name of the whole, is a good entry; if the Land do all lye in one County. 1. Par. Inst. p. 211.

In a Lease for years, if the Lessee covenant, that if he or his Executors or Assigns do alien, that then the Lessor shall re-enter, and afterwards he makes his Wife Executrix and dyes; and the Widow marries again, and her second Husband aliens;

In

In this case the *Lessor* may re-enter; because the second husband is Assignee in the *Law*.

Dr. & St. l. 1 c. 20. f. 35. If a man make a *Lease* for term of years, yielding to him and to his Heirs a certain Rent, upon condition, that if the Rent be behind and unpaid by the space of forty days after any of the days of payment, that then it shall be lawful to the *Lessor* and his Heirs to re-enter; And after the Rent is behind forty days, and is demanded by the *Lessor*, and is not paid; the *Lessor* dyeth and his Heirs enter; In this case his entry is lawful; but if the *Lessor* had dyed after the Feast-day, and before the fortieth day, so that he had not demanded the Rent, and his Heir had demanded the Rent at the fortieth day, and for non-payment he re-enters; in this case his re-entry is not lawful.

Dyer 254. If a *Lease* be made to *H.* for one and forty years if he live so long, and if he dye within the aforesaid term, that then the Wife of the aforesaid *H.* shall have it for the residue of the said years: this limitation is void: for if *H.* dye, the term ends, and his Wife shall have nothing in it. If

If a man let all his Meadow in containing ten Acres; if there be twenty Acres of it, all passes in this case. *D.* Dyer f. 80.

If a man make a Lease for years, and afterwards make a Deed of Feoffment, and delivers Seisin; If the Lessee be upon part of the premises, and neither know nor assent to it, yet the Livery is void: for though the Lessor hath the Freehold and Inheritance in him, yet the possession is in the Lessee; and Livery must be given of the possession; but the Lessee be absent, and hath neither Wife, Children, nor Servants (though he have Cattel) upon the ground, the Livery shall be good. 1 part. Inst. f. 48.

If a Lease be made to hold from the day of the making; or from the day of the date, or from the date, the Lease shall begin the day after it is delivered. Dates

If the *Habendum* of a Lease be for a term of one and twenty years, without mentioning when it shall begin; it shall then begin from the Delivery. So if an Indenture of Lease bear Date upon days Co. 1. part. Inst. f. 6. Cro. 3. pa 263, 264.

im-

impossible, as *Feb.* 30. or *March* 40. There being no such days in our Accompt, in this case if the term be limited to begin from the Date, it shall take effect and beginning from the Delivery, as if there had been no Date at all.

Noys Max. p. 67. If Lands descend to an Heir, he may make a Lease thereof before his entry into the same. If a man makes a Lease to day to one for ten years, and to morrow makes another Lease of the same Lands to another person for twenty years; this second Lease shall be good after the first is expired, for so many years as remaineth therein to come.

Co. 1. par. 1st. fol. 45. If a man make a Lease to another for one and twenty years, and after another Lease to commence from the end and expiration of the said term of years; and after the first Lease is surrendred; In this case the second Lease shall commence presently upon the surrender.

But if it had been made to commence from the end of the said one and twenty years, there though there had been a surrender, yet it should not have commenced till the term had been

been out; so that by this you may observe, the Law puts a distinction between a term of years, and time of years.

If a man lets *Lands* to another to hold, till the Lessee hath levyed twenty pounds; this is a good *Lease*, notwithstanding the incertainty.

Bracton saith that every *Lease* must have a certain beginning, and ending; *Quia id certum est, quod certum reddi potest.* Yet you see by the case before, this Rule is contradicted, so that it holds not always, although in the generality it doth.

For if a man make a *Lease* to another for so many years as *I. S.* shall name, although this be incertain at the beginning; yet when *I. S.* hath named the years, it is then good for so many years as he names.

So likewise, If *A.* be seised of Lands in Fee, and do grant to *B.* that when he pays him twenty shillings, that then from that time he shall have and occupy the *Land* for one and twenty years; and after *B.* pays unto

Co. 1. par. Inst. fol. 45.

unto A. the twenty shillings; this is a good Lease for one and twenty years from that time. Co. 6. l. f. 34, 35.

If a Parson make a Lease of his Glebe for so many years as he shall be Parson there, this is void, because of the uncertainty thereof; for the Parsons time there terminates with his life, then which nothing is more uncertain.

If a Lease be made for one hundred years, if A. and B. live so long; in this case if either of them dye, the Lease is ended.

Co. 1. par. Inst. fol. 45. If an Infant who is seised of Lands in Soccage, make a Lease at his age of fifteen years; this is good, and shall bind him.

Co. 1. par. Inst. fol. 46. If a Tenant in Fee marry a Wife, and make a Lease of his Lands for years, and after dye, and the Wife is thereof endowed, here she shall avoid the Lease, but after her death it shall be in force again against the Heir.

Co. lib. 8, f. 49. If a man have a term of years in the right of his Wife; if she dye, it remains to him; but if she survive him, it remains to her, and not to his

Ex-

Executors, without he diſpoſe of it in his life-time.

If a man licenſe another to enter and occupy his Lands, this is a good Leaſe for years, in Law. *Brownl.* 2. *part.p.*250.

A Leaſe for years, although it be never ſo long, cannot be entayled, becauſe it is a Chattel, which cannot be turned into an Inheritance. *Styles Regiſt.pract.p.*197.

If a man ſeiſed in Fee-Simple let a Leaſe to another, to have and to hold the ſame Lands for term of life, and do not mention whoſe life; it ſhall be taken for the Leſſees life; becauſe the act of every one ſhall be taken moſt ſtrongly againſt himſelf.

But if a Tenant in Tail let ſuch a Leaſe without expreſſing whoſe life, it ſhall be taken for the life of the Leſſor.

If a Joynt-Tenant make a Leaſe for Years, of his part, though the Leſſee never had poſſeſſion, or though it be to begin at a Day to come; and the Joynt-Tenant that made it dye before the day, yet the Survivor ſhall be bound by the Leaſe, Co 1.par In.f 185.

Lease, for the *Lessee* hath a present Interest,

If two take a *Lease* for their lives and make partition, either of them dying, his part immediately revert to the *Lessor*.

Golds. Rep. 187. If there be two Joynt-Tenants for life, and one of them makes a *Lease* for eighty years, to begin after his Death, and after dyes, This *Lease* is good against the Survivour.

Dr. & St. lib. 2. c. 33. If a Lease be made to the Husband and the Wife, yielding a greater Rent than the *Land* is worth; if the Husband dye, the Wife, after the Husbands death may refuse the *Lease*, to save her from the payment of the Rent: but if the Husband over-live the Wife, and then make his Executors, and dyes; if they have Assets; that is, if they have goods sufficient of their Testator to pay the Rent, they cannot refuse it: but if they have no goods sufficient of their Testator, to pay the Rent to the end of the term, if they relinquish the occupation, they may by special pleading discharge themselves of the Rent and the *Lease*.

If I let Lands in which are Mines, or Trees, I cannot enter to take the Trees, or Mines, but am a Treſpaſſer, unleſs I do reſerve ſuch a priviledge to my ſelf when I let the Lands.

But if a Leſſor do come upon the grounds Leaſed, he is no Treſpaſſer, for it ſhall be intended, that he came to ſee if Waſt were done.

If a Tenant for years, happen by any caſualty to loſe his Leaſe, yet he ſhall not loſe his term in the Lands let by ſuch Leaſe which is loſt, if it can be proved that there was ſuch a term let to him by Indenture; And that it is not determined.

E CHAP.

CHAP. IV.

Of Corn ſown, who ſhall have the Crop? Of Eſtovers, and Trees blown down; of Diſtreſſes, What things may be diſtreyned, and how uſed; who may take a Diſtreſs; for what cauſe, when, and where?

IT is a uſual ſaying, and generally received opinion, that he that Sows muſt Reap: But as there is no general rule without ſome exception; ſo this holds not always, that he that Sows ſhall Reap.

But touching the Sowing of Corn; if the Tenant be outed, or his term ends before it be ripe, who ſhall have the Corn I have already ſet down in the firſt *Chapter*, under the Title of *Tenant at Will*: for if a Tenant at Will Sow his Land, and the Landlord put him out before the Corn be ripe, he ſhall have liberty to Reap and carry away his Corn, be-

cauſe

cauſe he knew not when his Landlord would put him out.

But it is contrary with a Tenant who hath a Leaſe for years: for if his Leaſe be out before the Corn be ripe, his Landlord ſhall have it; becauſe he knew the end of his Leaſe: wherefore if he Sowed, it is in his own wrong, unleſs there be a Covenant in his Leaſe between the Leſſor and him, that he ſhall have his way-going Crop.

But if a Tenant at Will, ſet Roots, or Sow Hemp or Flax, or any thing that brings in any yearly profit, if after the planting the Leſſor out him, or if the Leſſor dye, yet the Tenant or his Executors ſhall have the Crop. But it is otherwiſe if he plant young Fruit-Trees, or other young Trees, as Oaks, Aſhes, or Elms; or Sow the ground with Acorns; In this caſe if the Leſſor out him, he ſhall have none of theſe, becauſe theſe yield no yearly profit at preſent.

If a Tenant for life Soweth the ground, and dye before the Crop be ripe, his Executors ſhall have it; and ſo they ſhall have Graſs if it

be cut, but if it be *unmown* they shall not have it, for that is part of the Inheritance till it be severed.

Every Tenant that hath an Estate incertain, shall have the Corn sown by him; though he be outed before it be ripe.

If a man be seised of Land *Jure uxoris*, and Sow this Land, and dye before the Corn be ripe; his Executors shall have the Crop: But if they be joynt-tenants of Lands, and the Husband soweth the ground and dyeth, the Wife shall then have the Crop.

See my *Consultam. pacis.* p. 83.

But if a Woman who holds Land, *Durante viduitate sua*, while she continues her Widow-hood, and Sows the ground, and marries a Husband before the Corn be ripe; here the Lessor shall have the Corn, because her Estate ends by her own act.

Hern. l. of con. p. 239.

If a man lets a Lease of his Wifes Land, she not joyning with him, this Lease is void after his death; but if the Lessee have sown the Land, he shall reap the Crop.

Noys Max. p. 70.

A Tenant holds by Lease, and the Land is recovered against the Landlord

Cowel. Int. p. 142.

lord by a title *Paramount*; in this case if the Tenant have Sown the Land, he that hath recovered it shall have the Crop, if it be not reaped before Judgment.

Estovers or Boots

There is three kinds of *Estovers* in the Law, which is incident to the estate of every Tenant, whether it be for life or years.

House-boot, of which is two kinds; the one to repair the Houses, the other to burn, which is calced *Fire-boot*.

Then there is *Estovers*, called *Plough-boot*; that is, stuff to mend the Tenants Ploughs, Carts, Harrows, Wayns, and making Rakes and Forks for getting in his Hay and Corn.

Thirdly, There is another kind of *Estovers*, called *Hedge-boot* this is Timber and wood for making Gates, and Styles, and Boughs and Bushes for mending and repairing Hedges and Fences.

So there is *Estoverium ædificandi & ardendi*, House-boot.

Estoverium arandi, or Plough-boot.

Estoverium Claudendi, or Hedge-boot.

Eſtover is a word ſomething harſh in ſound, being unuſually heard in the Ears of Tenants; but *Boote* is well known to them.

The one is *Norman*, the other *Saxon*; and both have the ſame ſignification, *viz.* an allowance, Compenſation, or Satisfaction. Any of all theſe *Boots*, a Tenant may take without aſſignment of the Landlord, unleſs he be by the Landlord reſtreyned by ſpecial covenant in his Leaſe; which is very uſual amongſt many Landlords, eſpecially if the Farm be any thing conſiderable; then they commonly limit the Tenant how much *Houſe-boot*, or *Plough-boot*, or *Hedge-boot*, he may take without aſſignment, and how much by aſſignment.

Co l. 4. 31. If a Tenant for life or years, cut down Trees, or pull down Houſes, or ſuffer them to fall down; the Leſſor ſhall have the Trees, and Timber of the ſaid Houſes: For the *Leſſee* had them only as things annexed to the *Land*; and this ſeverance will not give him a greater eſtate in them.

The *Landlord* ſhall likewiſe have Wind-

Windfals; that is, Timber-Trees blown down by Wind and Tempeſt, becauſe they are parcel of his Inheritance; ſo that the Tenant for life nor years cannot have them, unleſs it be to build withal where Houſes are in decay. But if they be *Pollards* without Timber, the Tenant ſhall have ſuch when they are blown down.

Diſtreſſes is a *Law* of Cuſtom; that is, if Rent be in Arrear and unpaid, the *Landlord* may take a lawful diſtreſs; and that he ſhall put in pound Overt, there to remain until he be ſatisfied of what he diſtreyned for. *Diſtreſs.*

So that if a *Landlord* diſtreyn the Cattel for Rent, and put them in a pound Overt, and the Beaſts dye there for lack of meat, it is at the peril of him that ow'd the Beaſts, and not of him that diſtreyned: For in him that diſtreyned there can be aſſigned no default, but the default was in the other, becauſe the Rent was unpaid. Dr. & St. l. 1. C. 5. p. 10.

Now a diſtreſs muſt be made of ſuch a thing wherein ſome body hath a certain and valuable Pro-

perty; therefore such things as are *Feræ naturæ*, cannot be distreined; neither can any one distrein a Horse if any body be on the back of him; nor any thing which a man holds in his hand, or carrieth about him, annexed to his body.

And although the Law be, that a Landlord may distrein any thing that he finds *Levant* or *Couchant* upon the premises for his Rent behind, whose Goods or Chattels soever it be, and may detain the same until his Rent be satisfied; yet this general Rule hath some Restriction and Limitation, for there are several things whereof a Distress cannot be taken.

What cannot be distreyned for Rent.

Such things as are for the maintenance and benefit of trades, cannot be distreined for Rent; as an Horse in a Smiths Shop, nor an Horse in an Inn, cannot be distreined for the Rent thereof; nor the Materials in a *Weavers Shop*, nor the making of Cloth, nor Cloth or Garments in a *Taylors Shop*, nor sacks of Corn, nor Meal in a Mill for the Rent thereof; nor any thing that the Tenant hath distreined for

Noys Max. p. 124.

Terms of the Law, titl. distress.

damage

damage feasant, for that is in the custody of the Law.

Likewise Oxen of the Plough may not be distreined, nor a Mill-stone, though it be raised to be picked, so long as it lies upon the other Stone. Cook on Lit. f. 47.

Neither may a Distress be taken of *Sheep*, if there be a sufficient Distress besides.

Neither can a man sever Horses joyned together, or to a Cart.

Likewise Victuals, nor Sheafs or Shocks of Corn cannot be distreined: But Carts or Waggons loaded with Corn may be distreined either for Rent, or *damage feasant*. Cook. ibid.

No mans Tools wherewith he works at his Trade shall be distreined, as the Carpenters Axe, or a Schollars Books, *&c.* Cook ibid.

Neither can any thing which is fixed to the Free-hold be distreyned, as Furances, Coppers, or Fats fixed for Dyers or Brewers, (although the Tenant may remove them during the term) nor the Windows or Doors of a House, while they are upon the Hinges. But if they be removed

off from the Hinges, they may be di-
ſtreyned.

The Landlord cannot diſtreyn Tables dormant in the Houſe of his Tenant, nor any thing which cannot be attached in an Aſſize; neither can any thing be diſtreyned, of which the Sheriff cannot make a *Replevin*, or that cannot be reſtored again in as good a condition as it was when it was diſtreined.

But a man may diſtrein the Beaſts of a ſtranger (that come by eſcape) for Rent, though they have not been *Levant* and *Couchant* upon the ground, according to *Cook.* 1. *par. Inſt. f.* 47.

The Lord of a *Leet* may ſell a diſtreſs taken for an Amerciament in his *Leet*, as the King may ſell a diſtreſs, becauſe it is the King's Court.

Dr. & St. 2. C. 27. If a man diſtrain Goods or Chattels, he may put them where he will, either in a pound *Covert*, or *Overt*. But if they take any harm he muſt anſwer for them.

If they be living cattel, they ought to be put in a common Pound, or elſe

elſe in ſome open place, as in his own Yard or Cloſe that diſtreined them, or in ſome others by his conſent; ſo that the owner may come lawfully to feed them: And the owner of the Cattel muſt have notice where they are, if they be not in a common Pound; and then if they dye for want of meat, it is the owners fault (as it is ſaid before,) but if they be in a Pound covert, or out of the County, and dye for want of meat, then he that diſtreined them ſhall make ſatisfaction for them.

Cattel taken *damage feaſant*, may be impounded in the ſame Pound, where they are *damage feaſant*; but Goods or Cattel taken for other things may not. Kitchin, f. 207.

No man ought to drive a diſtreſs out of the Country where it is taken, nor out of the hundred, but to a pound *Overt* within three miles; neither may a diſtreſs be impounded in ſeveral places; nor above four pence taken for the Fees of impounding one whole diſtreſs, on pain of five pound. Co. 1. part Inſt. p. 47. Raſtal title diſtreſs 11. Wingat. abr p. 133.

If a man diſtrein Beaſts *damage feaſant*, and put them in the Pound *Overt*, Dr. & St. l. 1. c. 27.

Overt, within the same County, not above three miles out of the hundred; and the owner suffer the Beasts to dye for lack of meat, the loss is his own, and he that destreined them, may be at liberty to bring his Action for the trespas if he will; and if it be not a lawful pound, then it is at the peril of him that distreined them; and so it is if he drive them out of the Shire, and they dye there.

Ibid. If the owner of the Cattel tender amends to him that distreined, and he refuse it, yet the owner may not take his Cattel out of the pound; for he may not be his own Judge: and if he do, a Writ *De parco fracto* for breaking the pound lieth against him; but he must sue a *Replevin* to have his Cattel delivered him out of the pound, and afterwards pleads his tender of amends, of which the Jury must end the controversie.

Ibid. If the owner of the Cattel procure a *Replevin* to deliver them, and he that destreined them resist it, and will not deliver them; in this case if they dye after for want of meat, it is at the peril of him that distrein-

ed,

ed, and the owner ſhall recover damages againſt him in an Action upon the Statute for not obeying the Kings Writ.

If a man ſends his Servant to take a diſtreſs for a *Rent* or Service, who puts it in the pound; if the owner of the Beaſts, or a ſtranger take them out, I ſhall have an Action *De parco fracto* for breaking of the pound.

And if one deſtrein Cattel, and pound them in another mans Cloſe with his conſent, and the owner of the Cattel come and take them out; in this caſe he that made the diſtreſs ſhall have his Action for Pound-breach; and the owner of the Cloſe, an Action of treſpaſs for breaking of his Cloſe.

There be certain caſes where a man may diſtrein of common right, and where not of common right: a man may diſtrein for *Rent*-Service, Homage, Fealty, Eſcuage, Suit of Court, or for *Rent* reſerved upon a gift in Tail, Leaſe for life, years or at will, though there be no clauſe of diſtreſs in the Leaſe; becauſe theſe diſtreſſes are of common right. Co. 1. par. Inſt. f. 204. 205.

But

Dr. & St. l. 3. c. 9. But for Debt, Accompt, Treſpaſs, or for Reparations, or the like, a man cannot diſtrein, neither can any diſtreſs be taken for any Services which are not certain, nor can be reduced, or brought into any certainty. And upon an Avowry damages cannot be recovered, for that which neither hath certainty, nor can be reduced to certainty.

Nevertheleſs (although it be a Paradox) in ſome caſes there may be a certainty in an incertainty: As for a man to hold of his *Lord*, to ſhear all his ſheep depaſturing within the *Lords* Mannor; and this is certain enough, although the *Lord* hath not always a certain number of ſheep, but ſometimes a greater number, and ſometimes a leſſer; yet this incertainty being reduced to the Mannor which is certain, the *Lord* may diſtrein for. And a diſtreſs is inſeparably incident to every Service that may be reduced to certainty.

A man may not diſtrein for Rent after the Leaſe is ended, nor out of the premiſes, except in ſome ſpecial caſes; nor in the night, unleſs it be *damage feaſant*.

But

But the Executors or Administrators of him who had Lands in Fee, or Fee-tail, or for life, may either have an Action of Debt against him that should pay it, or distrein for it; and so may the Husband after the death of his wife, his Executors or Administrators, and he which hath Rent for anothers life, for the Arrearages after his death.

A man puts Cattel into my Pasture for a week, and afterwards I give him notice that I will keep them no longer, and he will not fetch them away; I may then distrein them *damage feasant*. Noys Max. p. 33.

If a man take Cattel *damage feasant*, and as he is driving them to Pound, they run into the Yard or House of the man that owes them, and he refuses to let them out again; he that distreined them may have a Writ of *Rescous* against the owner of the Beasts for so doing.

If a Landlord come to distrein for Rent, and see the Cattel, and the Lessee or his Servants drive them out of his Fee; he cannot have a Writ of *Rescous*, because the Cattel were Co. 1. par. Inst. f. 161.

were not in his poſſeſſion: but he may follow after them, and diſtrein them in another mans ground, it being for *Rent*, but not for *damage feaſant*; for they muſt be taken *damage feaſant*; that is, doing damages.

Claytons Rep. p. 64. pl. 111. If a man diſtrein goods, and declare not the cauſe or reaſon wherefore he doth it, if they be put in a Houſe, the owner may break the Houſe, and take them out.

Or if a man diſtrein goods without cauſe, the owner may reſcue them, but if they be pounded, he cannot break the pound and take them out, becauſe they are then in the cuſtody of the *Law*.

But if he find the pound-door unlockt, he may take them out.

Although there be a general prohibition in the Laws of *England*, that it ſhall not be lawful for any man to enter upon the free-hold or Poſſeſſion of another, without permiſſion and Authority of the owner, or of the *Law*; yet this is not without exception.

For

For if a man drive Beasts along the High-way, and the Beasts run into any Man's Corn or Grass, and he that driveth them goeth after them into the Grounds to fetch them out, he may justifie that entry into the Grounds to fetch them out. Dr. and St. l. 1. c. 10.

If a man make a Feoffment, and that in Fee by Indenture, reserving a *Rent*, he cannot distrein for that *Rent* unless a distress be expressly reserved; And if the Feoffment be made without an Indenture reserving *Rent*, that reservation is void in the *Law*. And the like *Law* is, where a gift in Tail, or a Lease for term of life is made, the remainder over in Fee reserving a *Rent*, that reservation is void in the Law. Dr. & St. l. 2. c. 9.

Also if a man seised of Land for term of life granteth away his whole Estate reserving a *Rent*, that reservation is void in the Law, without it be by Indentnre: And if it be by Indentnre, he shall not distrein for the *Rent*, without a clause of distress be reserved. Ibid.

Also for Amerciaments it a *Leet*, the *Lord* may distrein, although it be Ibid.

in

in the High-way; but for Amerci-
ments in a Court-Baron, he cann-
distrein; neither can he distrein f-
an Amerciament in the *Leet*, in
place seised into the Kings hands f-
the Kings Debt.

Ibid. Also if a man make a *Lease* at *M-*
chaelmas, for a year, reserving a Re-
payable at the Feast of the Annun-
ation of our *Lady*, and St. *Mich-*
the Arch-Angel; in this case he m-
distrein for the Rent due at our *L-*
dy-day, but not for the Rent due
Michaelmas, because the time is ex-
red.

But if a man make a *Lease* at t-
Feast of *Christmas*, for to endure
the Feast of *Christmas* next follo-
ing, *viz.* for a year, reserving a Re-
at the aforesaid Feasts of our *La-*
day and *Michaelmas*; In this case
shall distrein for both the Rents
long as the term continues, that is
say, till the aforesaid Feast of *Chri-*
mas.

Dr. & St. ibid. And if a man have *Lands* f-
term of life of *J. N.* and makes
Lease for term of years, reservi-
a Rent, the Rent is behind, and *J. N.*
dyeth; there he shall not distrein
be-

ecauſe his reverſion is determi-
ed.

And if a Town or Pariſh be A-
nerced, and the Neighbours by Aſ-
ent, Aſſeſs a certain Sum upon eve-
y Inhabitant; And agree, that if it
e not paid by ſuch a day, that cer-
ain perſons thereunto aſſign'd ſhall
iſtrein; in this caſe the diſtreſs is
awful.

If there be Lord and Tenant, and Ibid.
the Tenant do hold of the *Lord*
Fealty and *Rent*, and the *Lord*
both grant away the Fealty, and re-
ſerve the *Rent*, and the Tenant At-
orneth; In this caſe he that was
ord may not diſtrein for the *Rent*,
for it is become a *Rent-Seck*.

But if a man make a Gift in
Tail to another, reſerving Fealty
and certain *Rent*, and after that he
granteth away the Fealty, reſer-
ving the *Rent* and the *Reverſion*
to himſelf; in this caſe he ſhall di-
ſtrein for the *Rent*, for the grant
of the Fealty is void, for the Feal-
ty cannot be ſevered from the rever-
ſion.

Alſo

Dr. & St. ibid. f. 75.

Alſo for Heriot-ſervice the Lo may diſtrein, but for Heriot-c ſtom he cannot diſtrein, but m Seiſe.

Alſo if a *Rent* be aſſigned make a partition or aſſignment Dower Egal, he or ſhe to who that *Rent* is aſſigned may diſtrei And in all theſe caſes aforeſaid where a man may diſtrein, he m not diſtrein in the night; but fo *damage feaſant*, that is, where h finds Beaſts doing hurt in h ground, he may diſtrein them nig or day when he finds them; but fo Waſte, Reparations, Accompts, for Debts upon Contracts, or ſuc like, no man can lawfully ſtrein.

CHA

CHAP. V.

Of Reſcous, in what caſes it may be Lawful: Of Replevins, how they are to be ſued out; and of Avowries to Declarations upon Replevins.

THe word or term *Reſcous* is derived from an old *Norman* Cook 1. par. Inſt. 160.
ib *Reſcourrer*, which is in the *La-* *recuperare*, that is, to take from, get again, or recover; So that *Reſcue* is as much as to ſay, to recover or get again what another hath taken away.

And in the ſence of the Law *Reſcous* is a taking away and ſetting again at Liberty goods diſtreined, or the body of a Perſon Arreſted, and in an Officers cuſtody by vertue of legal proceſs.

Such kinds of *Reſcous* as apperain unto our preſent ſubject are f diſtreſſes taken, in what caſes it ay be juſtifiable to *Reſcue* Goods

or

or Cattel distreined, and whe not.

Co.l.4.f. 11. If a *Landlord* distrein when the is no *Rent* due, the Tenant may ma a *Rescue*, and hinder that distress.

1 Par. inst. f. 160. In like manner if a *Landlo* come to distrein, and the Ten tender his *Rent* unto him, and t *Lord* will distrein notwithsta ing; in this case the Tenant m make *Rescous*.

Cook ibid. Magna Charta, f. 25. If *Rent* be in Arrear, and the *Lo* distrein the Tenants Cattel in t High-way within his Fee; here al the Tenant may *Rescue* them, f no man may distrein in the Hig way, but the King and his Office by special Authority.

Ibid. f. 122. In like manner, if a *Landlord* d strein *Averia carucæ*, goods of t Plough, where there is a suffic ent distress to be taken besides or if the *Lord* distrein any thi

Rastal tit. distres. 10. that is not distreinable by comm *Law* or Statute: In this case it lawful for the Tenant to make *R cue*.

Hughs. gr. abr. 1. part. p. 217. C. 21. But if a *Lord* come to distrei Cattel which he seeth within hi Fee, and the Tenant or any other

o prevent the distress drive the
attel away out of the Fee; the *Lord*
ay follow them with fresh Suit
nd distrein the Cattel, and the Te-
ant cannot justifie a *Rescous* of
hem, because in the Judgment of
e *Law* the distress is taken within
Fee.

But if the *Lord* be coming to di- Co. 1. par.
rein, and have not sight of the Cat- Inst. fol. 161.
l within his Fee, though the Te-
ant drive them off on purpose,
if the Cattel after the view go
t of the Fee of their own accord,
if the Tenant after the view re-
oveth them for any other cause
an to prevent the distress; then
the *Lord* distrein them out of
s Fee, the Tenant may justifie a
scue.

If a man come to distrein Cattel Cook,
mage feasant, and see the Beasts ibid.
his Ground, and the owner of
e Cattel drives them out before
e distress taken; the owner of
e Ground cannot follow and
k them; for if he do, the owner
f the Cattel may *Rescue* them, for
ey must be *damage feasant*; that
, doing hurt at the time of the
distress

distress taken, and the owner of th ground may bring his action of tre pass.

Cook Ibid.

The Lord cannot break open an Gate that is locked, nor break op any Inclosure to take a distress: that if a Tenant lock up his Gate and inclose his Ground, so that t Lord cannot come to distrein, the *Rent* be behind, and the *Lo* have had actual possession, this is disseisin.

Replevin.

For the ease and speedy remedy the Country in case of distresse where the Cattel be pounded, t Statute hath provided, that ever Sheriff, at his first County day, within two months after he first re ceives his Patent, is to depute a proclaim in his Shire-Town fo Deputies to make *Replevins* with his Country, which must resi within twelve miles one of anothe on pain of five pounds a month every month they are wanting.

So that when any mans goods a distreined or impounded, he may re pair to one of the Sheriffs Deputi for that purpose; and there he ma have a *Replevin* (upon *Plegii*

Return

Return. habendum si, &c.) to cause the goods distreined to be delivered to the Owner.

There is likewise a Writ *de Replegiari facias* at the Common *Law*, whereby the Sheriff is commanded, taking pledges of Prosecuting, to redeliver the goods distreined to the Owner: But since the other is the readier and easier way, this Writ is out of fashion.

In a Replevin, he whose goods are distreined or impounded becomes the Plaintiff, and declares against the other for unjustly taking and detaining his Goods or Cattel *contra vad. & plog*, &c.

If a Landlord distrain, and carry the distress to hold, or out of the County, so that the Sheriff upon a *Replevin* cannot redeliver the goods, then upon the Sheriffs return of the *Replevin*, may have a Writ of *Withernam* directed to the Sheriff, to take as many of the Lords Beasts, or as much goods in his keeping, till he have made deliverance of the first distress; and if the Goods or Cattel be conveyed to a Fort or Castle, the Sheriff may command

Rastal. tit. distresses. 7

the power of the Country, and beat it down.

If a distress be made in a Franchise or Bailiwick, the Sheriff is to direct his Replevin to the Bailiff thereof to deliver them upon Pledges, &c.

Property. The Plaintiff in the Replevin ought to have the property of the goods in him at the time of the distress made; for if the Defendant claim property, the Sheriff cannot Replevie the distress, but the property must be tryed by Writ.

Co. 1. par. Inst. f. 145. So that if the defendant claim property in the goods distreined, then must the Plaintiff in the Replevin have a Writ *de Proprietate probanda*, directed to the Sheriff to try the property; and if the Inquest find for the Plaintiff, then the Sheriff must make deliverance of the distress: And if it pass for the defendant, the Sheriff can proceed no further unless the Plaintiff bring a Writ of *Replegiari facias* directed to the Sheriff, and then though he do return the property, yet it shall proceed to tryal in the Common Pleas upon the issue of the property.

The

The Defendant in a Replevin, that is, he that made the distress, may if he see cause, bring a Writ of *Recordari*, and so remove the plaint upon the Replevin, out of Sheriffs County-Court into the Common-Pleas; and if the Plaintiff declare not, he may have a *Return habend.* And then if he declare not, a Writ to enquire of damages.

If a man by his Deed grant a Rent with a clause of distress, and grant further that he shall keep the goods distrained against sureties and pledges till the Rent be paid, this grant is not good, but the Sheriff may Replevie the goods distreined notwithstanding: For if such a distress should be irrepleviable, the current of Replevins should be stopped, to the great damage of the Subject.

If the Goods or Cattel of several men be distreined, they cannot joyn in a Replevin, but every man must have a several Replevin. For in a *Replevin* it is a good Plea to say, the property is to the Plaintiff and to a Stranger, and where there are two Plaintiffs, that the property is to one of them. Co. 1. par. Inst. f. 145.

If a Lord distrein his Tenant wrongfully, although the Cattel be come back again to the owner; yet the Tenant may have a *Replevin* against the Lord, because he cannot have an action of trespass against him.

The Plaintiff in a *Replevin* ought to be careful in giving his instructions for it, for it must be certain in setting down the number and kinds of the Cattel which are destroyed, otherwise the *Replevin* is not good.

Avowry. The *Avowant* is the Defendant in a *Replevin*; that is, he that made the distress; and when he justifies in his Plea for what cause he distreined, that Plea is called his *Avowry*.

As if a Landlord distreins for Rent in Arrear, and the Tenant or owner of the Cattel brings a *Replevin*, and declares against him for unjustly taking and detaining his Cattel, and the Defendant justifies he took it in his own right, and in shewing the cause of the taking in his Plea: this is an *Avowry*.

But if the Defendant took the distress for or in the right of another then when he hath shewed the cause in

in his Plea, he must make *Conusance* or acknowledgment of the taking the distress, as being Bailiff or servant unto him in whose right he took it.

There are four manner of Avowries which a *Lord* may make upon a Replevin.

1. A vowry upon his very Tenant. Co. l. 9. f. 135. 136.

2. Upon his very Tenant by the Manner where the Tenant had but a particular estate.

3. Upon his Tenant by the Manor where the *Lord* had but a particular estate, and these three are Avowries at the Common Law.

4. The *Lord* may Avow upon the matter in the Land as within his Fee: this is provided by the Statute 21. *H.* 8. C. 19. and is the safest way for the benefit of the *Lords*; for by this Statute, a Lord may Avow the taking a distress, as in Lands holden of him within his Fee, without naming of any Person in certain; which by the Common Law they could not do, but were thereby compelled to Avow upon a Person in certain, which often proved much to their damage and prejudice: for by the secret Fines, Recoveries, Grants, 21 H. 8. C. 19.

and Conveyances, which the Tenants uſed purpoſely to frame to defraud their Lords, they were ignorant upon whom to make their legal Avowry; which inconveniencie the forementioned Statute hath prevented.

Now in an Avowry upon this Statute, the Plaintiff in the Replevin be he Tenant for years or otherwiſe may have every ſufficient anſwer and aid, and every other advantage in the Law to the Avowry: Diſclaims only excepted; for becauſe the Avowry is made upon no certain perſon, he cannot diſclaim.

Co. 1 par. Inſt. f. 226. If a Tenant hath *Rent* behind for divers years, and makes a Feoffment in Fee, and the *Lord* accept the *Rent* or Service of the Feoffee due in his time, he ſhall loſe the Arrearages of his *Rent* due in the time of the Feoffor. For after ſuch acceptance, the Lord cannot avow upon the Feoffor, nor upon the Feoffee, for the Arrearages due in the time of the Feoffor; but if the Feoffor dyeth, although the Lord accept the *Rent* or Service by the hands of the Feoffee due in his time, yet he ſhall not

loſe

lose the Arrearages, because he is now by the Law compelled to Avow upon the Feoffee; and what the Law enjoyns him to, shall not be prejudicial unto him.

If the Plaintiff in a Replevin be non-suit, or otherwise by Avowry barred or overthrown; then the Defendant or Avowant shall recover costs and damages against the Plaintiff, as the Plaintiff should have done or had, if he had recovered in the Replevin against the Avowant.

I

CHAP. VI.

In what cases a Tenant or other shall be said to commit waste in Houses, Gardens, Woods, Pastures, Orchards, &c. and what Waste shall be punishable, and what not.

IT concerns every Tenant, of what nature soever his Tenure be, to be very careful herein: for he may in committing Waste soon become obnoxious to the *Law*, and incur great damage.

I shall therefore by way of caution shew you in what cases a Tenant may commit Waste, so as to render himself lyable to loss and punishment; and then how far a Tenant may act upon his Tenure, and not commit any punishable Waste.

Cook. 1. par. Inst. f. 53. If a Tenant for life or years, or in Dower, do pull down any of the Houses or Tenements, or suffer them to be uncovered, to the rotting or destroying of the Timber or Materials

rials of the House, this is waste.

So likewise if Glass-windows be broken down or carried away it is Waste, though the Tenant glazed them himself: for the Glass is part of the House. It is also Waste to take away Wainscot, if it be fixed to the Walls or Posts of the House.

It is likewise Waste to take away Doors or Windows, or any thing annexed or fixed to the Free hold, although the Tenant fixed them there himself.

If a Tenant build a new House where none was before, it is Waste: and if he suffer it to be wasted, it is a new Waste. Cook. ibid.

The pulling down of a Stone-Wall, or Mud-Wall of a House is Waste.

If a Tenant of a Park, Warren, Dove-house, or the like, do not leave such sufficient store as he found when he entred, is is Waste; and so is it to suffer a Park-pale to decay, whereby the Deer are lost or dispersed.

If a Tenant suffer the Houses to be wasted, and then Fell Timber Co. 1. part. Inst. f. 53.

ber to repair them, this is a double Waste.

Waste is properly in Houses, Gardens, and Timber-trees; that is, Oak, Ash and Elme, which are counted Timber generally in all places, except in some Copy-holds Elme is not.

Now these Timber-trees are said to be wasted either by cutting them down, lopping or topping them, or any other ways decaying the Timber.

And in some Countries where Timber is scarce, Beech is accounted Timber, or other Trees used for building Houses; and there the cutting of them is Waste. Idem,

Or if a Tenant suffer the young *Germens* of Trees to be destroyed, this is destruction, and punishable in Waste.

To cut down any Trees, as Willows, Birch, or the like, which stand and grow in the defence and within view of the dwelling House, is Waste.

It is a Waste to cut down Hazels which grow not under the great Trees, but in a quarter of the Wood by themselves.

If a Tenant grub up or destroy a quick

quick fence of white-thorn, it is waſt. Co. 1 pa
Inſt. f. 53

Burning of a houſe by negligence or Miſchance is Waſt.

Where is a Wood, and nothing growing there but underwood, the Tenant cannot cut all. But if it be a Wood where great Trees grow amongſt the underwood, there he may cut all the underwood.

It is Waſt to cut Apple-trees, if they bear fruit, though they lye along the ground.

It is alſo Waſt to cut Damſin-trees or any fruit-trees growing in a Garden or Orchard.

To dig for Gravel, Chalk, Clay, Brick, Earth or Stones, or the like, is Waſt; and ſo it is if a Tenant dig for any Mines which were not open at the time of the Leaſe made.

To ſuffer a bank or Wall of the Sea to be in decay, ſo that by the Flux and Reflux of Sea, the Marſh is overflown, ſo that it becomes unprofitable, is Waſt.

But if the Sea break in ſuddenly by a violent tempeſt, it is no Waſt.

It is Waſt alſo if a Tenant ſuffer the banks of any River or Water to decay, whereby the ground is ſurround-

rounded, or becomes unprofitable; so it is to suffer pasture-ground to be surrounded so as it becomes Rushy, or arable land, so that it becomes tough clay.

It is waste for any Tenant to convert Arable into Wood, or Meadow into Arable.

The punishment in Wast is treble damages, and forfeiture of the place Wasted.

There is voluntary or actual Wast, and permissive Wast.

An action of Wast lyeth against a Tenant by the courtesie, Tenant for life or years, half a year, or Tenant in dower, by him that hath the Estate of Inheritance, in any of all these cases before mentioned.

But wast doth not lye against a Guardian in Soccage, but an Action of Accompt or Trespass.

Neither doth Wast lye against a Tenant by *Elegit*, Statute Merchant or the Staple; but an Action of Accompt after the Debt and damages levied.

Co. 1 par. inst. 54. Waste doth not lye against a Tenant at will: But if such Tenant voluntarily pull down houses, or cut down

down Timber-trees or the like; in this case the Lord may have an action of Trespass against him.

But against a Tenant in Mortgage, either an Action of Wast or an accompt will lye against him, because his estate is conditional. Noy. Max. p. 33.

If two or more Joynt-Tenants, or Tenants in common, be in a house, and one will repair the house, and the other will not; in that case he that will repair it, may have a Writ *de Reparatione faciend.*

If a Landlord covenant to repair the house, and doth it not, in this case the Lessee may cut timber growing upon the ground and repair it, though he be not compellable thereunto, and shall not be punishable in Wast for so doing.

No man can have an action of Wast unless he have the immediate estate of inheritance; but sometime another shall joyn with him. Cook. 1. part. Inst. p. 53.

As if a Reversion be granted to two, and the Heirs of the one, they two shall joyn in an action of Wast.

In like manner the Surviving *Partners* and the Tenant by the courtesie shall joyn in an action of waste.

If

If a Tenant for years comm
Waſt and dye, no Action of Wa
lyeth againſt his Executors or A
miniſtrators for waſte done befo
their time.

Kitchin f. 244. If there be two *Copartners* of
Reverſion, and one of them dye, th
Aunt and Neece ſhall joyn in a
Action of waſte.

If a Tenant for life commit waſ
and after ſurrender his Eſtate; an
the Leſſor accepts it; the Leſſee
then diſcharged of the waſt.

If a ſtranger commit Waſte upon
the lands which one holdeth for li
or years, the Tenant ſhall ſuffer fo
it, and is left to take his remedy o
ver againſt he that did it.

If a Landlord covenant to deliver
timber out of the ſame land to re
pair the houſe let, and will not del
ver it, and for defect thereof the Te
nant will not repair it, but ſuffer
the houſe to fall down; this is waſt
in the Tenant, and he is puniſhable
for it.

But if the timber be to be taken
out of other lands, and be not deli
vered, then the Tenant is excuſable
if he ſuffer the houſe to fall, and no
action

ction of waste lies against him.

If a single woman Rent lands and marries, and her husband commits waste and dyes; she shall be punished for this waste done by her husband. Idem.

But if a Lease be made to a man and his wife, and her husband commits waste and dyes; in this case the wife shall not be punished for such waste, unless she agreed to the estate.

If a woman be Tenant for her life, and marries and her husband commit waste, and the wife dyeth, the man is not punishable for this waste: But if a woman be possessed of a term of years, and takes a husband who commits waste, and the wife dyes; here the man is liable to an action of waste for the waste by him committed, because he enjoyeth the term of the Lease. Cook. 1 part. Inst. 54.

If a man make a Lease for life, or years, and after grants the Reversion for years, the Lessor shall have no action of waste during the years, for he himself hath granted away the Reversion, in respect whereof he is to maintain his action.

If an action of waste be brought,

and

and the Term end while it is depending, yet the writ shall not abate for although the Plaintiff cannot recover the place wasted, yet he shall recover the treble damages.

Co. 1. part Inst. f. 285. Likewise if one be Tenant for term of anothers life, and make waste, and afterwards the *Cestui que vie* dyes, here the Lessor shall recover treble damages, but cannot recover the place wasted, for that falls to him by the death of the *Cestui que vie*.

Cook. 1. part. Inst. f. 54. If waste be done in one corner of a Wood, that place only which is wasted shall be recovered: But if it be done here and there about the wood, then the whole wood shall be recovered, or as much wherein the waste *specifice* is done.

Idem. And so in Houses, so many Rooms shall be recovered wherein there is waste done.

Regist. prob. p. 343. If a man make waste, in cutting trees which grow in hedge-rows which inclose pastures, nothing shall be recovered but the place wasted, that is, the circuit of the roots, and not the whole pasture; but if trees grow scatteringly about the pasture,

hen the whole pasture is forfeited if ey be cut.

It is good plea in bar to a Writ of Waste, to say, that the house fell by a dden tempest, although the Te- nt did covenant to repair it, but is no plea in an Action of cove- nant.

It is also a good plea in a writ of Waste, to say, that the house was ainous at the time of the *Lease* aking, and the Timber so putrified nd Rotten that it fell.

It is also a good plea to say, that he Plaintiff hath entred upon the and, before which entry no waste as made; or that he Surrendred, nd the Plaintiff did accept; be- re which time no Waste was ade.

If a Tenant doth waste, and af- terward Surrenders, and the Lessor grees, yet the Lessor may have an ction of wast, and recover treble amages. Cook. 1 part. Inst. f. 285.

If an action of wast be brought husband and wife in remainder special tail, and the wife dyeth the suit depending) without issue; this case, the writ of waste shall a-

If

Idem f.220. If a Leaſe be made to hold to [illegible] without any impeachment of waſt, then the tenant may cut down trees and convert them to his own uſe; but if the words be to hold without impeachment for any action of waſt, in this caſe if the Leſſee cut down trees, the Leſſor ſhall have them.

Cook. 1 part Inſt. 233.234. If a Tenant for life grant a rent charge, and after doth waſte, and the Leſſor recover in an action of waſte, he ſhall hold the land charged during the life of the Tenant for life; but if the rent were granted after the waſt done, the Leſſor ſhall then avoid the grant made by the Leſſee for life.

Idem f.345 If a Tenant in Fee releaſe to the Tenant for life all his right, yet he ſhall have an action of waſt.

And if a Tenant in Tail make a Leaſe for his own life, yet he ſhall have an action of waſt.

But if there be a Tenant for life, the remainder to another in Tail, and he in the remainder releaſe to the Tenant for life all his right and Eſtate in the land; he cannot afterward have an action for waſte.

If the Grantee of a Reverſion bring

bring an action of waſte, the Leſſee may plead generally, that he hath nothing in the reverſion.

If a Leſſee before his term begin enter into the lands let to him, and do an act which amounteth unto waſte, the Leſſor ſhall not have an action of waſte for the ſame.

None ſhall have judgment to recover in an action of waſte, where the waſt comes but to 12 d. or ſuch a ſmall ſum.

If waſte be done upon lands let for term of years, or life, by one, againſt whom the Leſſee can have no remedy in Law for committing the ſame waſte, the Leſſee in ſuch caſe is not puniſhable for the ſame by the Leſſor, except there be a ſpecial covenant in the Leaſe, that he ſhall not permit nor ſuffer waſte to be done. Cook. 2 part. Inſt. f. 303.

If the houſe be uncovered when the Tenant cometh in, it is no waſte to the Tenant, if he ſuffer it to fall down.

The raiſing of a new frame of a houſe which was never covered, is no waſte. If a houſe fall by ſudden tempeſt, or be burnt by lightning, or deſtroyed by Enemies, or the like, with

without any default of the Tenant or was Ruinous at his coming in, a fall down; this is no waſt.

And the Tenant may build t ſame again with ſuch materials remain; and with other Timb growing upon the ground; but muſt not make the houſe any larg then it was, for if he do, it is waſte.

If a Tenant fix a Furance, and n to the Walls nor Poſts of the Houſe if he take it away within his term, is no waſte.

If a Tenant in Fee fix a Furnac in the middle of the houſe, the h ſhall have it and not the Executors.

If a Houſe fall by a great wind tempeſt, the Leſſor ſhall have t Timber, for it is no waſte, and t Leſſee is not bound to build it up gain.

CHAP.

CHAP. VII.

Tenants Law, touching Mens Buildings in the City of London, *For prevention of Suits between Landlords, Tenants, and under-Tenants in the City of* London, *whose Houses were destroyed by the dismal Fire which happened the 2. Sept. 1666. For the speedy Rebuilding the City, and preventing differences, it is enacted.* 19 Car. 2.

A Court of Judicature for Rebuilding the City.

THat the Justices of the *Kings-Bench* and *Common-Pleas*, and Barons of the *Exchequer*, being of the degree of the Coife, or any three or more of them, to hear and determine all differences which may arise between Landlords, Proprietors, Tenants, Lessees, Under-Tenants, late occupiers of any Houses, Courts, Yards, Grounds, Wharfs, or

or of any claiming any Estate, or Title in or to the same, their Heirs, &c.

And to defalk, apportion or abate Rent or Rents, and to limit and prefix or limit time for Rebuilding, and to proceed from time to time and at such place or places as any three or more of them shall think fit, *Sine forma aut figura Judicii*, and to enquire by Jurors Verdict, Witnesses upon Oath, Examinations of parties interessed, or otherwise to hear and determine all differences between the parties interessed concerning the premises.

Fol. 7.8. That the definitive order of the said Justices and Barons, or any three of them shall be final, No Writ of Error or Certiorari shall be for reversal or removal of the same.

The said Judges, or any three or more of them, have power to order the surrendring, Abridging, Leasing, Determining or Charging of any Estates in the premises; to add longer time to Leases not exceeding forty years, of such Rent and Fine, or without as they shall think fit.

Upon the Petition of any person con-

ncerned; The said Judges shall
ue out Notes or Warrants, under
e hands of any there of them, to
mon the persons therein named, to
pear before them, at such time
d place as such Note shall specifie,
d upon *non*-appearance, Oath be-
ng made of the service, the said
ustices and Barons, or any three of
em, to proceed to definitive Or-
r.

Enacted, That the said Justices Fol. 80.
nd Barons or any three of them,
all be a Court of Record, and shall
ave all Judgments and Determina-
ions to be Recorded in a Book of
archment; and that every Judg-
ent be signed by three of the said
ustices and Barons, and to be
ept amongst the Records of the
ame Court.

The said Justices and Barons are
o order a Table of Fees for the Of-
ers to be imployed in the said
ourt.

Whereas any Order is made by a
ess number than seven of the
id Justices and Barons, then any
erson grieved by such Order, may
ake in Exceptions in seven days to
the

the chief Justices and chief Baro
or any two of them, who are to a
quaint the rest therewith, and t
hear the Parties, and consider th
said Exceptions: and if seven
more subscribe that they find caus
then any seven or more of the sa
Justices and Barons shall withi
twenty days after the Exceptio
delivered, review the former order
And to reverse, confirm, enlarge o
diminish the same as they shall thin
fit.

This Act to continue in force til
the last of *December*, 1668, and n
longer.

19 Car. 2. R. fol, 84. 85. Enacted, That the Lord-Mayor Aldermen, and Common-Counsel shall nominate Surveyors or Supervisors to see the Rules touching th New building of the City observed

The buildings to be surveyed. If any one build contrary to th Rules hereafter mentioned, the sam to be deemed a Nusance, and th builder to enter into Recognizanc before the Mayor and Justices, t abate, demolish or amend the same according to the Rules and Orders and if the Offender refuses, he shall be committed to the common Gaol

of

of the City, without Bayl or Mainprize; there to remain till he shall have abated, demolished, or amended the same; or else such irregular Buildings may be demolished by order of the Court of Aldermen.

The Surveyers to take an Oath for the impartial execution of their Office. Fol. 86.

There shall be only four sorts of Buildings and no more. Idem.

The least sort in By-Lanes. *Four sorts of Buildings.*

The second sort in Streets and Lanes of Note.

The third sort of Houses Fronting the principal Streets.

The fourth sort of Houses for Persons of extraordinary quality; not fronting either of the three former ways; the Roofs of the three first sort of Houses to be uniform.

The Lord-Mayor, Aldermen, and Common-Counsel, shall declare which shall be accompted By-lanes; which Streets or Lanes of note; and which high and Principal Streets. Idem.

All the Streets and Lanes intended Fol. 87.

Streets and Lanes to be staked out.

to be rebuilt, shall be Marked and Staked out, by order of the Lord-Mayor, Aldermen, and Common-Council, that the breadth, length, and extent thereof may be known and observed.

Penalty for pulling up any Stake or Mark.

None shall wilfully pull up, or remove any Stake or Mark-Stone, on pain of ten pounds, to the use of the City, or three Months imprisonment without Bail or Mainptize; or if the Offender be not able to satisfie such Penalty; then the Justices may by order under his or their Hand and Seals, cause such Offendor to be whipped near the place where the offence shall be committed, till his body be bloody: And it shall be lawful for the said Justice or Justices to ward the informer out of the penalty not exceeding a third part thereof.

Fol. 88.

Enacted, That the out-side of all Buildings in and about the City, be made of Brick or Stone; or Brick and Stone together, except Doorcases and Windowframes, the Breast Summers, and other parts of the first Story to the Front between the peers, to be of Oken-timber. The said Doors, breast, Summers and Win-

dow-

dow-Frames to be discharged of the burthen of the Fabrick by Arch-work of Brick or Stone.

Enacted, That the Supervisors take care, that there be party-walls, and party-peers, set out equally on each Builders ground, to be built up by the first Builder, and that there be touching left in the Front-wall by the first Builder, for the better joyning of the next House to the same. Fol. 89. *Surveyors to see there be party-Walls.*

That no man be permitted to build on the said party-wall, or on his own ground, till he hath re-imbursed the first Builder the full moyety of the said party-Wall and Peers, with Interest for the forbearance of the same, after the rate of six pounds *per cent. per annum.* to be accounted from the beginning of the said first building.

If any difference arise concerning the true value of the said charge; the same to be referred to the Alderman of that Ward, and his Deputy.

And where the said Alderman and his Deputy, or one of them shall be parties, or cannot compose such difference, The Lord Mayor and Court of Aldermen, to examine, to hear, and

termine the ſame, from whence there ſhall be no appeal.

Fol. 90. *The Aſſize of Buildings.*

The firſt and leaſt ſorts of Houſes ſhall be two Stories high, beſides Cellars and Garrets; the Cellars thereof to be ſix Foot and an half high, if Water hinder not.

The firſt and ſecond Story to be nine foot high from the Floor to the Cieling; All Walls in Front, and Rear of the firſt Story, to be of the length of two Bricks thick; and thence upwards to the Garrets, one Brick and an half; the back part of the Garret Walls not to be leſs in thickneſs, than the length of one Brick.

And that the thickneſs of the party-Walls between theſe Houſes, be of one Brick and an half, as high as the Garrets; and the thickneſs of the Party-Wall in the Garrets be one Brick in length, and the Timber and Stone to be of the Aſſize ſet down in the Table.

Aſſize of the ſecond ſort of Building.

The Houſes of the ſecond ſort of building, ſhall be three Stories high, beſides Cellars and Garrets; And the Cellars to be ſix Foot and an half high, (if Water hinder not;

The first and second Stories to be ten Foot high, from the Floor to the Cieling, the third nine Foot; the Walls of the first Story to be of the thickness of two Bricks length and an half, and upwards to the Garret one Brick and a half; the thickness of the Party-walls to be two Bricks length, the first Story and thence upward, one Brick and an half; the Timber and Stone as is prescribed in the Table.

Third sort of Building.

The Houses of the third sort of building to be four Stories high, besides Cellars and Garrets: The first Story to be ten Foot high; the second ten Foot and an half; the third nine Foot; the fourth eight Foot and an half.

All the Walls of the first Story to be the thickness of the length of two Bricks and an half; and upwards to the Garret Floor one Brick and an half; the thickness of the Party-walls two Bricks length as high as the first Story, and to the Garret Floor one Brick and an half; Timber and Stone as in the Table.

Fourth sort of Houses.

Mansion Houses being the biggest and fourth sort of building, not

Fol. 39. fronting Streets or Lanes, to keep the Assize, set down in the Table; the Number of Stories and height to be at the Builders discretion, so it is exceed not four Stories.

Belconies and Penthouses. In all high Streets to be Belconies four foot broad, with rayles and barrs of Iron to stand equally in distance from the ground; and the vacancy of the Front to be supplyed with a Penthouse, of the breadth of the Belcony, to be covered with Lead, Slate, or Tile, and Cieled underneath. The water to be conveyed into the Channels by party-Pipes, and the Pavements under the Belconies and Penthouses to be made of flat stone.

Cellar Floores. No first Floor in any high Street be laid above 18 inches above the Street, nor under six.

No Trap-door, nor open grates to be made into any Cellar, without the Foundation, but all lights be made upright.

That there be no Bulks, Jetties, Posts, *&c.* beyond the Ancient Foundation in any Street or Land, saving only in the high Streets, the Stallboards when the Shop-windows are open

open may turn over eleven inches and no more into the Streets.

Limitation for Building.

All persons seised in any ground formerly builded upon, shall build the same in three years; in default thereof, Proclamation to be made by act of Common Council upon the ground, and at the Exchange between twelve and two of the Clock, that the persons concerned, rebuild within nine moneths next ensuing; and in refusal or neglect of rebuilding, the Mayor and Court of Aldermen to issue out Warrants to the Sheriffs, to impannel a Jury to inquire of the value of the ground.

After the inquiry and value, the said ground to be sold under the Common Seal of the City, and the money to be paid into the Chamber of *London*, and to be paid out by the Chamberlain to the persons interested therein.

The said Sales to be inrolled upon Record in the said City, and shall finally barr all persons, their Heirs, and assigns, to claim any Estate out of the ground so sold, and the Purchasor freed and discharged from all Incumbrances precedent the said sale.

Wages of Work men and prices of Materials.

The Justices of the Kings Bench, or any two or more of them, may call before them Brick-makers, Tile-makers, and Lime-burners, that make or burn Brick, Tile, or Lime, within five miles of the Thames, and confer with them if they will be present, or in their absence, to Assess reasonable prices upon Bricks, Tiles, and Lime, to be delivered at the Kilns; and of the Carriage of the same materials both by Land and Water.

The said Justices of the Kings Bench, or any two or more of them, upon the complaint of the Lord Mayor and Court of Aldermen, may limit and rate the wages of Brick-makers, Tile-makers, Lime-burners, Carpenters, Brick-layers, Masons, Plaisterers, Joyners, Plummers, or other Artificer, work-man, or labourer.

The said Rates and Prices being so Assessed, shall be set down in a Table, and Proclamation thereof made by the Lord Mayor which shall bind all persons concerned.

lty of al.

If any one refuse to sell materials at the rate Assessed, or refuse to work

work for the wages Aſſeſſed, or leave his work begun before it be finiſhed, unleſs it be for non payment of wages: or if any one ſhall directly or indirectly Article or agree for greater wages or prices than ſhall be aſſeſſed, and be thereof convict by one witneſs before a Juſtice, he ſhall ſuffer Impriſonment one month, or pay ſuch Fines as the Juſtice ſhall ſet upon him, not exceeding Ten pounds; out of which Fine the Juſtice is to ſatisfie the party injured, and pay the remainder to the Chamberlain of *London*, for the re-edifying the publick buildings of the City.

Forreigners to work as well as Free-men. Fol. 49.

All Carpenters, Brick layers, Maſons, Plaiſterers, Joyners, and other Artificers, Work-men and Labourers, who are not free-men, ſhall be ſet to work as well as Free-men, and enjoy the ſame priviledges; and after they have wrought ſeven years in their reſpective Arts, they ſhall have liberty to work as Freemen of the ſaid City, during their lives.

Lights and Water-courſes.

All differences touching Lights, Water-courſes or Gutters, ſhall be de-

determined by the Alderman of the Ward, and his Deputy where the difference is, if they be not parties concerned; but if they be concerned, or cannot determine the same, The *Lord* Mayor and Court of Aldermen, to do it without Appeal.

Sewers and Pavings. The numbers and places for all Common Sewers, and Draynes, and Vaults, and the pavings and pitching the Streets shall be set out by such persons as the *Lord* Mayor, Aldermen, and Common Council shall appoint under their Common Seal; and they or any Seven of them with the Surveyors or one of them, shall order and direct the making, altering, and cleansing of Vaults, Sinks, and Sewers, and to impose a reasonable Tax upon all houses within the said City and Liberties towards the same, and to levy the same by Distress in case of refusal.

Fol. 101. No other Commissioners to intermeddle in the premises in seven years, and so long after, till the said Buildings be fully finished.

Idem. Noisome Trades Prohibited. The Lord Mayor, Aldermen, and Common Council, to prohibit such Trades to be used or exercised in the

the high Streets, as they shall judge noysome or perillous in respect of Fire.

The Lord Mayor and Court of Aldermen, and Common-Council may remove any of the Conduits out of the High-Streets, and erect them in such other places as they shall think fit.

The Lord Mayor, Aldermen, and Commons may enlarge the Streets in such manner as there shall be cause by the approbation of his Majesty, and not otherwise; and may enlarge any passage which is less than fourteen foot in breadth. And to make a New Street from *Guild-Hall* to *Cheap side*, of such bredth and wideness as they shall judge meet. *Streets to be enlarged* Fol. 102.

The Lord Mayor, Aldermen, and Common Council, to treat with the Owners of such ground as shall be taken away, or imployed as aforesaid; and in case of refusal or other impediment, to issue out Warrants to the Sheriffs, to return a Jury, to inquire of and assess Damages and Recompence to the owners of any such Houses or Ground: And such Verdict and Judgment thereupon, and *Satisfaction for Grounds taken away* Fol. 104.

and the payment of the money ſo awarded to the owners, or tender, and refuſal thereof, ſhall be binding againſt the ſaid parties, their Heirs, Executors, Adminiſtrators and Aſſignes, and others claiming any title or intereſt in the ſaid Houſes or Ground; And be a full Authority for the Lord Mayor, *&c.* to convert the ſame to the purpoſes aforeſaid.

nprove-ents; ol. 106.

In caſe of refuſal or incapacity of any of the owners, or others intereſſed in the ſaid Houſes, to agree and compound with the *Lord* Mayor, Aldermen, and Commons for the ſame, A Jury ſhall be impaneled, to aſſeſs upon the parties intereſſed ſuch ſums of Money, conſidering the improvement of their Houſes, as they ſhall judge fit in conſcience and reaſon.

All ſums of money ſo raiſed, to be paid to the City-*Chamberlayn*, who is enabled to recover the ſame by Action at Law, and his Recepit ſhall be a good diſcharge: Which money, ſhall be imployed for ſatisfaction for ſuch Houſes and Ground as ſhall be converted into Streets, Markets, Paſſages, and other publick

lick places; and such satisfaction so given, or tendred, shall devest the propriety of the owners of such ground, and the same shall be hereby invested in the Lord Mayor, Commonalty and Citizens of *London*, and their Successors.

Several Claims determinable by the Judges, &c.

Where several persons claim several interests in any Ground to be sold by the Lord Mayor, and Aldermen by vertue of this Act; if any difference arise between the said persons so interessed, the Justices of the *Kings Bench*, and *Common-Pleas*, and Barons of the *Coif*, of the *Exchequer*, or three or more of them, are finally to determine the same, without formality of Proceedings, and to award such distribution of the money to the parties interessed, according to their respective Estates or Interests, as to them shall seem reasonable. According to which order and distribution, the said purchase-money shall be paid by the *Chamberlain* to the said several persons respectively.

A yearly Fast. Fol. 108.

The second day of *September* (unless it be Sunday) and if so, the next day following to be for ever observed as a yearly Fast.

A

A Column or Pillar of Brass or Stone to be erected on, or as near as conveniently may, to the place where the Fire began, with an Inscription to be thereon, in perpetual Remembrance of the said dreadful Visitation.

Ensurance Office. All tenders of money, or payments which ought to be made in the late Ensurance Office, or in the Royal Exchange, may be made at the Ensurance Office in *Gresham-Colledge*, and be valid to all intents and purposes.

Churches, Fol. 109. The number of Churches to be rebuilt, shall not exceed 39. which are to be appointed by the Arch-Bishop of *Canterbury*, and Bishop of *London*.

The Sites, and Materials, and Yards of such Churches as shall not be rebuilt, are vested in the Lord Mayor, and Aldermen; and so much of the Ground as shall not be laid into the Streets, shall be sold; And the money to be imployed towards the rebuilding of such Churches as are intended to be built.

This Act shall not extend to St. *Pauls* Church, St. *Faiths* nor St. *Gregories* by St. *Paul's*, nor any of the Church-yards thereunto belonging.

Thames-

Thames-Street, and the Ground between the said Street and the *Thames*, shall be raised three foot higher than now it is. Thames. *Street to be raised*, Fol. 110.

No house or other building (except Cranes and Sheds) shall be built within 40 foot of the *Thames*, from the Tower to the Temple; Nor any house or other building (Cranes, only excepted) shall be built within 70 foot of the middle of any part of the Common Sewers called *Bridewell-Dock*, *Fleet-Ditch*, and *Turnmil-brook*, before the 24th. of *March*, 1668.

From the 24th of *June* 1667. to the 24th. of *June* 1677. All Coals brought into the River, to be sold by the Chaldron or Tun, shall pay 12 *d.* every Chaldron, and for every Tun 12 *d.* to be paid by the Master or owner of every Ship or Vessel to the Mayor and Commonalty, *&c.* or their Deputies or Assignes before the ship break bulk.

To prevent Fraud; The Coalmeeters shall deliver Certificates to the Officers or Assignes of the said Mayor and Commonalty, of the quantity of Coals delivered from no-

Board

Board any Veſſel; if any be Concealed, there ſhall be paid 5. s. for every Chaldron or Tun ſo Concealed, unleſs the importer within 24 hours after Certificate delivered in by the Coal-meeter, give in his Poſt Entry, and ſatisfie the duty for ſuch ſurpluſage.

The money raiſed upon this Impoſition, ſhall firſt be diſpoſed to ſatisfie ſuch perſons, whoſe Grounds ſhall be taken for the enlarging of the Streets and paſſages within the City; and the Reſidue ſhall be imployed for the making of Wharfs and Keys, and building of Priſons within the ſaid City.

All money hereupon to be received, to be entred in a book or books of Vellam or Parchment, to be kept in the Chamber of *London*; where alſo ſhall be kept another book or books, wherein ſhall be entred the Accompts of all payments and diſburſements, expreſſing the time when, the occaſion for which, and the name of the perſon or perſons to whom the ſame was diſburſed.

All perſons concerned to have free acceſs to the ſaid Books, when the Chamber-

Chamberlains Office is open, to view the ſame without paying any Fee.

The Chamberlain before the end of *Michaelmas* Term in every year, ſhall deliver upon Oath into the Receipt of the Exchequer, a true Copy of the ſaid books, conteyning all the Receipts and diſburſements of the preceding year, ending upon the 24th of *June* next before; which is to be received *gratis*, and kept amongſt the Records of the Exchequer, whether any perſon concerned may have acceſs to view and peruſe the ſaid books without paying any Fee or Reward. *The Water-houſe.*

The Water-houſe adjoyning to *London-Bridge* may be rebuilt where formerly it ſtood.

The Lord Mayor and Aldermen may enlarge the paſſage called *Water-Lane*, from *Fleet-Street* to *White-Fryars-Dock* by the *Thames*, and to enlarge a paſſage to the ſaid River, from *Cheapſide* through *Soper-Lane*, to *Thames-Street*, and from the three Cranes to the *Thames*; and to enlarge another paſſage through *Mincing-Lane*, by St. *Dunſtons* in the *Eaſt*, to *Thames-Street*,

Street, near the *Custom-House*, and to make the said passages 24 foot in breadth; giving notice to the Proprietors before the last day of *May*, 1667. of their resolutions herein; and to give them satisfaction for their ground, according to the directions of this Act.

Assize of Timber and Stone for the First sort of Houses.

For the first Floor, Summers under 15. foot. 12. inches, and 8. Inches.

Wall Plates at 7. and 5. Inches.

Rafters under 15. foot, { at foot 8 / at top 5 } inches.

Single Rafters, 4 and 3. inches.

For the two other sorts of Houses.

	foot,	foot. inches,	int.
Summers in length,	10 to 15	15 — 11 —	& 8
	18	18 — 13 —	9
	21	21 — 14 —	10
	24	24 — 16 —	12
		26 — 17 —	14

Joysts which bear 10. foot	thickness, inches,	depth inches.
	3	6
	3	7
	3	7
	3	8
	3	8

Prin-

	length Foot Foot	inches,	thickneſs inch
Principal Rafters from	15 to 18	at foot 9, at top 7	—7
	18——21	at foot 10, at top 8	—8
	21——24	at foot 12, at top 9	—8½
	24——26	at foot 13, at top 9	—9

Single Rafters { not exceeding in length, 9 fo. — 5 inc. — 4 inc.
in bredth, 6 — 4 — 3½
thickneſs,

	Foot,	inches,	inches,
Single quarters in length	8	3½	1½
Double quarters,	8	4	3½

	F.	I.	I.
Sawed Joyſts in length,	8	6	4
Laths in length 4 5		1½	1 quarter and half inch.

Aſſize

Assize of Stone.

		Inches.
First sort of Houses	Corner Peers	18. Square
	Middle Peers	14. & 12.
	Double Peers	14. & 18.
	Door-Jambs	12. & 8.

		Fo. Inch.
Second and third sort of Houses	Corner Peers	2. & 6. Sq.
	Middle Peers	18. Square
	Double Peers	24. & 18.
	Door-Jambs	14. & 10.

No Timber to be laid within twelve Inches of the foreside of the Chimney Jambs.

No Timber to be laid within the Tunnel of any Chimney, upon paine of 10*s.* to the Workman, and 10*s.* every week it so continues.

Joysts and *Rafters*, not to be laid above twelve Inches distant, and no quarters at above fourteen Inches distant.

No Joysts to bear at longer length than ten Foot; and single *Rafters* at nine Foot.

The *Roofs*, Window-Frames, and

and Cellar-floors to be made of Oak.

Tile-pins to be made of Oak.

Summers and Girders to lye ten Inches into the Wall; and Joysts eight Inches, and not to be laid over the Head of any Doors or Windows.

FINIS.

E. & M. 24/10/08

Books printed for, and sold by John Amery *at the* Peacock *near St.* Dunstan's *Church in Fleetstreet.*

COllection of Law Entries, &c. by *William Rastal.* Printed 1670. fol. price 3. l.

Cok's Commentary on *Littleton.* Printed 1670. fol. price 18. s.

The whole Office of a Sheriff, by *Michael Dalton* with very large additions printed 1670. fol. price 12. s.

Lord *Cok*'s eleven reports in *French*, fol. printed 1672. price 3. *l.*

The Compleat Clerk; concerning best forms of all sorts of presidents, *Quarto*, printed 1671. Price 12 *s.*

An Abridgement of all the Statutes that are in force and use from *Magna Charta* to this year 1674. by *Edmund Wingate* Esq; *Octav.* price 6 *s.*

Fitzherberts Natura Brevium, Octav. pr. 5 *s.*

Terms of the Law with Additions, *Octav.* pr. 4 *s.*

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Briddal's view of the Law of *England*, *Octav*, price 1 *s*.

Littleton's Tenures French and English in Twelves, price 2 *s*. 6. *d*.

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Liber placitandi, a book of special pleadings, containing presidents &c. *fol*, printed 1673, price bound 2 *s*.

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FINIS.

Ex. J. M.
14/10/08